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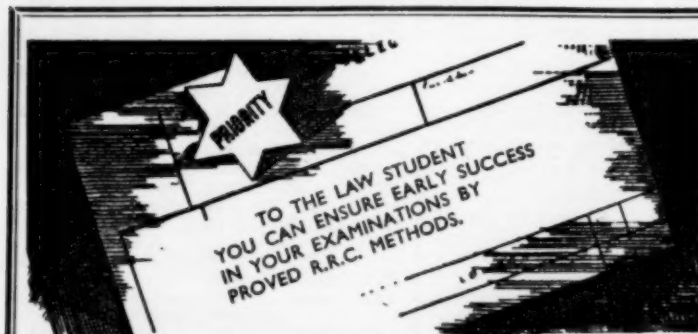
Christmas Number

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. Note: Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

CASE WORK among women prisoners: fully-trained experienced worker wanted for experiment one or two years by Holloway D.P.A. Write fully to Margery Fry, 48 Clarendon Rd., W.11.

INQUIRIES

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BOROUGH OF AYLESBURY

Appointment of Deputy Town Clerk

APPLICATIONS are invited for this post from Solicitors with considerable local government experience.

Salary: £1,020 × £40—£1,100.

There are certain special features relating to this appointment, and particulars of these, together with more detailed information, are available on application to the undersigned.

The last day for the receipt of applications is Wednesday, January 5, 1955.

H. CROOKES,

Town Clerk.

Town Hall, Aylesbury.

COUNTY BOROUGH OF STOCKPORT

Senior Assistant Solicitor

SALARY new grade APT VI (£825—£1,000). Particulars and application forms from Town Clerk, Town Hall, Stockport, to be returned by January 15, 1955.

URBAN DISTRICT COUNCIL OF HINCKLEY (Leics.)

Population: 39,350 (approx.).

Area: 11,882 acres.

Appointment of Clerk & Solicitor of the Council

APPLICATIONS for this appointment are invited from Solicitors with local government experience at a commencing salary within the range of £1,517 10s. 0d. to £1,727 10s. 0d. per annum according to qualification and experience. The Salary Scale and Conditions of Service are in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks, and the appointment is subject to three months' notice on either side.

The successful applicant will be required to pass a satisfactory medical examination.

The person appointed will be required to carry out all statutory and other duties devolving upon him or assigned to him by the Council and to act as Registrar of Local Land Charges and Returning Officer at Local Elections. All fees, emoluments and payments of any kind (with the exception of personal fees referred to in the Recommendations of the Joint Negotiating Committee) shall be paid to the credit of the Council's Account.

Applications, giving age, qualification, experience, present and previous appointments, and accompanied by the names and addresses of two persons to whom reference may be made should reach the undersigned not later than Wednesday, December 29, 1954, envelopes being endorsed "Appointment of Clerk & Solicitor of the Council."

Canvassing, directly or indirectly, will disqualify, and every applicant must disclose in writing whether he is related to any member or senior officer of the Council.

J. G. S. TOMPKINS,

Clerk of the Council.

Clerk's Department,
16, Station Road,
Hinckley.

BOROUGH OF BARKING

ASSISTANT SOLICITOR required, commencing salary, within Grade V (£840 to £900 per annum, plus London weighting). Applications, including the names of two referees, to be received by the Town Clerk, Town Hall, Barking, on or before January 10, 1955.

E. R. FARR,

Town Clerk.

BOROUGH OF HEMEL HEMPSTEAD

Assistant Solicitor—£765—£825

SOLICITORS with local government experience are invited to apply for this post not later than January 3, 1955. A house can be provided for a married man. If asked, I will send further particulars.

C. W. G. T. KIRK,

Town Clerk.

Town Hall,
Hemel Hempstead.

URBAN DISTRICT COUNCIL OF ENFIELD (Population 111,000)

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the above appointment:

Salary:

(a) After admission and on first appointment—A.P.T. Grade V (a) £650—£710, plus London Weighting.

(b) After two years' legal experience from date of admission—A.P.T. Grade VII £735—£810, plus London weighting.

The above salary scales are subject to the National Joint Council's decisions of August 31, 1954, which will be implemented as from January 1, 1955.

Full particulars and forms of application may be obtained from the undersigned. Closing date for applications January 1, 1955.

Canvassing either directly or indirectly will disqualify.

CYRIL E. C. R. PLATTEN,
Clerk of the Council.

Public Offices,
Enfield.

December 6, 1954.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Durham Petty Sessional Division

Appointment of Chief Assistant to Justices' Clerk

APPLICATIONS are invited for the above appointment. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office and be capable of taking complete charge in the absence of the Clerk, including taking the Courts.

The salary will be in accordance with A.P.T. Grade V (£750 × £30—£900).

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than December 31, 1954.

J. K. Hope,
Clerk of the Committee.

Shire Hall,
Durham.

COUNTY BOROUGH OF EAST HAM

Deputy Children's Officer

APPLICATIONS invited from persons with experience of work in a Children's Department. Salary £600 × £25—£725 (New APT III Grade) plus London weighting.

Further details and form of application (returnable by January 6, 1955) from Town Clerk, Town Hall, East Ham, E.6.

Justice of the Peace and Local Government Review

[ESTABLISHED 1837.]

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LONDON : SATURDAY, DECEMBER 18, 1954

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NOTES of the WEEK

Medical Evidence on Condition of Defendant

The Court of Criminal Appeal, in *R. v. Nowell* [1948] 1 All E.R. 794; 112 J.P. 255, laid down an important principle about the reception of the evidence of a medical practitioner called by the police to examine a driver who was alleged to be under the influence of drink. These examinations usually involve some questioning of the defendant by the doctor, and sometimes admissions are made by the defendant. It was argued that since the doctor had used some persuasion in order to induce the defendant to submit to examination his evidence became inadmissible, but the court which had been referred to a Scottish case held that in England a police doctor does not, as may be the case in Scotland, act "as the hand of the police." His evidence should, therefore, be accepted as that of a professional man giving independent expert evidence with a desire to assist the court.

In the High Court in *Eire*, upon Case Stated by a district justice, Davitt, P., declined to follow *R. v. Nowell*, and held:

1. That while a person charged with an offence is perfectly free to assist the prosecution by a free confession, or by making admissions tending to establish his guilt, before any such confession or admission could be received in evidence the prosecution would have to establish that it had been voluntarily made.

2. That proof that the usual caution had been administered merely constituted part of the process of establishing that the confession or admission had in fact been voluntarily made.

3. That the undertaking and failure of performance, shortly after the time at which it was alleged he had been drunk, of a test which a sober man could perform adequately constituted an admission of incompetence on the part of a person charged with driving a motor car while drunk.

4. That when a doctor is called in by the police to examine a person suspected of being drunk, with a view to preferring a charge such as that in the case under consideration, and the doctor conversed with him, or conducted an examination involving question and answer; or submitted him to certain tests, the principles as to the admissibility of confessions applied to the question whether evidence of the result of such tests was admissible.

5. That evidence as to what the person so suspected had said, or of the results of the tests, ought not to be received by any court trying the person upon the criminal charge, unless the prosecution affirmatively established to the satisfaction of the court that

any statement in the nature of a confession made by the accused had been voluntarily made; and any test the result of which tended to incriminate him had been voluntarily undergone. The case was *The State (Inspector Michael Sullivan) v. Major Kanda Robinson*, (1954) Irish L.T. 169.

Assisting the Defendant

At a recent meeting of magistrates a speaker was asked whether he did not consider it unfair for one of the parties to a matrimonial case to be legally represented and the other to be without such assistance. The speaker replied that he preferred to put it that the court had an increased responsibility to help the unrepresented party, since at present it was not possible for such party to be granted legal aid in the magistrates' court at the public expense.

Quite apart from statutory requirements, it has been considered fitting that unrepresented parties should be helped by the court to present their cases whenever that seemed necessary, especially in the difficult matter of cross-examination. There are certain statutory requirements. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, r. 9 (2) provides that the court shall put questions to witnesses on behalf of a juvenile who, being unassisted, makes assertions when invited to cross-examine. Section 6 of the Summary Procedure (Domestic Proceedings) Act, 1937, contained somewhat similar provisions relating to domestic or bastardy proceedings, now contained in s. 61 of the Magistrates' Courts Act, 1952.

The importance of strict compliance with the provisions of s. 61 of the Magistrates' Courts Act was emphasized in *Fox v. Fox* [1954] 3 All E.R. 526. In proceedings before a magistrates' court based on alleged desertion the wife was legally represented but the husband was not. He asked only one question by way of cross-examination of his wife, and then gave evidence. Matters raised by him in his evidence were not put to the wife, and an order was made in her favour. On appeal by the husband, it was held that it was the duty of the court under the Act to put these matters to the wife, to see what her answers were, and then judge the case. The court set aside the order and remitted the case for re-hearing by different justices.

"Parking" at Night

By the Motor Vehicles (Construction and Use) Amendment Regulations, 1953, a new regulation, 88A, was added to the main regulations. It is as follows:

(1) Save as provided in para. (2) of this regulation no person shall except with the permission of a police officer in uniform, cause or permit any motor vehicle to stand on any road during the hours of darkness *otherwise than with the left or near side of the vehicle as close as may be to the edge of the carriageway.*

(2) This regulation shall not apply to : (here follow various exceptions with which we are not concerned).

The object of the regulation seems clearly to be to stop the dangerous and reprehensible practice of parking at night on the "wrong" side of the road so that drivers of other vehicles are liable to be deceived as to the course of the road. It really is dangerous in wet or misty conditions on a winding road, because a driver's instinct is to steer to the left of a vehicle which is showing white lights towards him and to the right of a vehicle whose rear light is facing him, and accidents can very easily be caused when he suddenly realizes that he has to go to the other side of the vehicle in question because it is parked on the wrong side of the road.

We know no good reason to justify the practice. Any driver who knows that he is going to leave his car parked after darkness has fallen should think instinctively that he must be on the correct side of the road ; and should either approach his stopping place so as to bring him on to the correct side or should turn round after he arrives and before he leaves his car. It is just as dangerous from this point of view if the car is left without lights because the reflectors act as a "rear light" and give the same false impression to other drivers. We think the practice is due to carelessness and laziness on the part of those guilty of it, and we hope that the police will take the necessary steps, by prosecuting offenders, to try to cure this bad habit. The authorities must attach some importance to the matter or they would not have gone to the trouble to introduce this new provision. There is plenty of evidence on the roads at night that the public is either ignorant of it or has, at present, no intention of taking any notice of it. If this is to be allowed to continue, it is a pity the regulation was introduced.

Back to Back Houses

Everybody knows that the Housing, Town Planning, &c., Act, 1909, prohibited the erection of back to back houses except in pursuance of plans approved before the passing of the Act, and that s.17 of the Housing Act, 1925, amended by the Housing Act, 1930, and consolidated in s.22 of the Housing Act, 1936, declared back to back houses as such to be unfit for human habitation, apart from certain limited exceptions. It will therefore come as a surprise to many people to learn that in the West Riding of Yorkshire, in which almost all of the remaining houses of this type are to be found, there are still no fewer than 155,800, more than one-eighth of all the dwellings in the Riding. The *Manchester Guardian* of November 22 published detailed figures for several towns, concentrated in the woollen textile area (apart from 11,000 at Sheffield), showing how many years must elapse before they can be done away with at the present rate of building. It is presumably the sheer weight of numbers that has prevented the local authorities concerned from implementing the intentions of the Housing Acts from 1909 to 1936.

Not all back to back houses are, however, in fact unfit for human habitation, whatever Parliament has said about them. Moreover, there are plenty of houses in the West Riding and not a few elsewhere which have the feature which constitutes the specific evil of back to back houses, namely a back wall with no apertures for ventilation. Under the local byelaws

ordinarily adopted since the Public Health Act, 1875, these windowless and doorless back walls cannot have been lawfully built, but there are older houses still existing, while some towns had no byelaws and some may have had exceptional byelaws.

Among the houses which are, strictly, back to back there are many capable of some improvement, by the creation of new ventilation or by turning two houses into one. Detailed plans have been prepared by the local authorities concerned, for getting rid in stages of the houses which are really bad, but it looks as if the improvement grants now made available can be sensibly employed to redeem the best of these houses, and make them available as homes for the present and indeed for several years, rather than that they should be destroyed in accordance with the letter of the pre-war Acts.

Community Buildings in New Towns

Some time ago correspondence appeared in *The Times* about the absence of proper provision for the spiritual and community needs of the rapidly expanding new towns. Those in the London area figured prominently in this correspondence and it was urged that the souls of those new centres of population were being neglected as fast as their material requirements were being supplied.

Soon after these ripples in the columns of the newspapers a question in the House of Lords (June 24, 1953) elicited that authority was obtained for the issue of building licences for an extra £1½ million in the following 18 months for churches, church halls and other new housing projects, including those in the new towns. It is interesting to consider the subsequent record in this direction of New Town Development Corporations.

The Ministry of Housing and Local Government have always held that it is not the duty of the development corporations to provide services which are the statutory responsibility of other authorities. The provision of community facilities is a matter for the local education authority, who under the Education Act, 1944, must submit a phased programme. Having regard, however, to the restrictions on education expenditure those authorities have not been able to do this. The Physical Training and Recreation Act, 1937, also endows local authorities with power to make community provision but similar financial restrictions have hampered them in making progress. In view, however, of the rapid growth of the new towns the government thought it right to have a temporary policy devoted to the provision of essentials. This was never intended to be more than a stop-gap arrangement but under it, nevertheless, a total of 26 buildings has been provided with eight more in the course of construction. The completed buildings have cost about £100,000 and a further £38,000 will be spent on the remainder.

The church authorities have also made considerable progress with the building of church halls. They have to date built eight permanent halls and a further five are under construction. The capital cost of those buildings is being defrayed by the ecclesiastical authorities themselves but there is ample evidence that the Churches Main Committee, which is representative of all denominations is tackling this problem energetically.

The New Town Development Corporations have each approached this question in their own way. In some new towns, there was already ample provision for community buildings and so the necessity did not arise. Others not so fortunate in their existing facilities bought large existing houses and adapted them. Others followed the expedient of building temporary

huts. Some corporations have preferred small permanent tenants common rooms liberally sprinkled in housing areas whilst others have selected larger buildings in substantial neighbourhood centres. One development corporation (Stevenage) are building a community hall adjacent to a secondary modern school, the up-to-date facilities of which, will, therefore, be available to them.

Up to date, however, only one local education authority has undertaken the provision of community buildings. The West Sussex county council has added an adult wing to the new

primary school in West Green at Crawley. On the other hand, of course, the ample provision for new schools in new towns enables their excellent facilities to be used by adults out of school hours and local education authorities are co-operative in this direction.

Other buildings in new towns, although run for profit, have their social and community uses. Examples are public houses, and cafés and confectioners' shops with their rooms for public social gatherings. Altogether it is fair to say that the authorities concerned recognize their responsibilities in this direction.

MAGISTRATES' POWERS OF REMAND WHEN TRYING INFORMATIONS

The article "Remand for Medical Examination" at p. 758, *ante*, seems to us to have concentrated on one aspect of a subject of general importance to magistrates' courts, and we should like here to consider the matter more generally.

We will go back to the Summary Jurisdiction Act, 1848, which by s. 16 formerly regulated the powers of courts of summary jurisdiction to adjourn and remand when hearing informations or complaints. The relevant parts were "before or during the hearing of such information or complaint it shall be lawful for one justice or for the justices in their discretion to adjourn the hearing of the same . . . and in the meantime the said justice or justices may suffer the defendant to go at large or may commit him to the common gaol . . . or may discharge such defendant upon his entering into a recognizance with or without sureties . . ."

This section was always interpreted as giving to a magistrate, in his discretion, a general power to remand, in custody if necessary, whatever the offence. In *R. v. Toynbee Hall Juvenile Court JJ.* [1939] 3 All E.R. 16; 103 J.P. 279, the High Court emphasized that his power to remand in custody must not be used to enable a court to *punish* by imprisonment an offence not so punishable, *i.e.*, that a remand must not be used as a punishment but must be ordered only for proper reasons. This did not mean, however, that a court must never remand in custody in a case where the offence is one which can be punished only by a fine, although courts will naturally consider carefully, having regard to their maximum power of punishment, whether it is proper so to remand.

The next Act to be considered, dealing with the power to remand, was the Criminal Justice Act, 1948. Section 25 (1) declared that the powers of a court under s. 16, Summary Jurisdiction Act, 1848, to adjourn the hearing of a case includes power, after a person has been convicted and before he has been sentenced or otherwise dealt with to adjourn the case *for the purpose of enabling inquiries to be made*, or of determining the most suitable method of dealing with the case. Such an adjournment was not to exceed three weeks on any one occasion.

Let us pause here and note that the powers under s. 16 of the 1848 Act include power to remand, and that the adjournment and remand may be for the purpose of enabling inquiries to be made. These inquiries may well include, in the absence of express exclusion, inquiries about the defendant's health, physical or mental.

Then came s. 26 (1) of the 1948 Act as follows: "*Without prejudice to any powers exercisable by a court under the last foregoing section*, where a person is charged before a court of summary jurisdiction with an offence punishable on summary

conviction with imprisonment and the court is satisfied that the offence has been committed by that person but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court *shall* remand him in custody or on bail (with or without sureties) for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made."

We summarize this as meaning that in the circumstances therein referred to the discretion of the court under s. 16 of the 1848 Act and s. 25 of the 1948 Act was taken away and the court had to remand for the requisite medical report. But it is most important to remember that s. 26 (1) started "without prejudice to any powers exercisable by a court under the last foregoing section" and we have no doubt that those powers included power to remand after conviction in any case tried summarily to enable inquiries, including medical inquiries, to be made.

How could such inquiries be made. The defendant could be remanded on bail and asked, if he were willing, to be medically examined meantime so that the necessary medical evidence would be available, or he could be remanded in custody and the governor of the prison could be asked to furnish the court with such medical report as he was able to obtain. This could not be, and so far as we know never was understood to be, an order from the court to the governor to have the defendant medically examined. It was a request for information to be complied with by the governor so far as the prison rules permit. If the report was asked for mainly on the ground that the defendant was thought to be mentally unstable a medical report could be furnished without any physical examination. Observation would be all that was required.

We agree that except under s. 26 of the 1948 Act, it was not (and is not now) possible to remand a defendant on bail with a condition in his recognizance that he must undergo medical examination.

The Magistrates' Courts Act, 1952, a consolidating statute, reproduces the provisions we have referred to in the earlier statutes.

The general power to adjourn is in s. 14 (1) of the 1952 Act. The power to remand when adjourning is in s. 14 (4) and the powers which may be exercised on remanding are to be found in ss. 105 and 106. The statement of the power to adjourn (and by s. 14 (4) to remand) after conviction and before sentence is contained in s. 14 (3). The provisions of s. 26 of the 1948 Act are in s. 26 of the 1952 Act and in the Rules. These provisions leave the position which we have been discussing precisely as it was before the 1952 Act was passed.

So far as r. 25, referred to in the earlier article, is concerned, our view is that one does not look to the rule to interpret the section, and that the rule is merely procedural to tell the court what procedure it is to follow when acting under s. 26.

Form 30, Magistrates' Courts (Forms) Rules, 1952, also referred to in the earlier article, is drafted to be available in two sets of circumstances:

(a) Where a court has convicted and remanded for inquiries under s. 14 (3).

These inquiries may be of various kinds and cannot, therefore, be usefully specified in the form.

(b) Where a court has remanded under s. 26.

Here the inquiries must be medical ones, and the form so specifies.

In conclusion we would emphasize that we agree that s. 14 (3) of the 1952 Act gives no power to require a defendant to be medically examined, but it does authorize a court to remand so that medical inquiries may be made in cases where the court, exercising a proper judicial discretion, thinks that such inquiries may be in the interests of justice in the widest sense.

The fact that the powers given by s. 14 (3) can be abused by courts which act without proper discretion is no reason for denying the existence of those powers. If the power is abused the High Court will be prompt, when so moved, to correct the abuse and to make clear, if it thinks fit, what the limits of the power are. But we think it would be a pity if courts refrained from trying to get information which may help them to deal with cases in the best possible way because of any misapprehension as to their powers.

DISABILITY OF COUNCILLORS

We are disturbed by the line taken by the Ministry of Housing and Local Government in a case which was brought to our notice from the north of England. A local authority is considering the making of representations to the British Transport Commission on the subject of the proposed closing of a branch railway line. Such closings are taking place in many parts of the country and often the local authority feels it its duty to protest; in the present instance the local authority may do so, or it may decide to acquiesce, but before doing either it must inform itself so far as possible of all the facts. Three councillors are employees of the British Transport Commission, railway guards, or otherwise engaged upon the railway. It might be that their pecuniary interest would be adversely affected if the local line were shut: there would, that is to say, be less employment for them. On the other hand they may be in a position to give a point of view of the British Transport Commission at first hand, in a way that would otherwise not be readily accessible to the general body of councillors. We should have thought in these circumstances that it was desirable to remove the disability (if any) for their taking part in the local authority's proceedings under s. 76 of the Local Government Act, 1933, at any rate so far as to enable them to speak, even if it was not removed so as to enable them to vote. There are plenty of precedents for such a partial removal. Upon application to the Minister in this sense, the clerk of the local authority has, however, received the reply that the Minister was advised that there was no disability, by reason of the first proviso to para. (b) in s. 76 (2), read with the definition of public body in s. 305 of the Local Government Act, 1933. We doubt ourselves whether this view of the law is correct, but (whether it is or not) more important than our view is the fact that the legal advisers of the trade union of which the councillors are members take the view that there is a disability, and it is not safe for those councillors to take part in the proceedings. This opinion was brought to the notice of the Minister's advisers, but the latter have adhered to their own view of the law and the Minister has declined to remove the disability. This seems to us to be wrong. Section 76 of the Act of 1933 is a penal provision, and it is the individual councillors who stand to be shot at in legal proceedings. It is true that by virtue of subs. (7) a prosecution under the section cannot be instituted except by or on behalf of the Director of Public Prosecutions, but there can be no guarantee that he will be moved by the same view of the law as the legal advisers of the Minister. In earlier cases, before the reconstitution of the Ministry under its present title, we are pretty sure that the line to be taken in such cases was to remove the disability in so far as removal might be necessary, instead of refusing to do so, upon a

view of the law which might or might not in the event of prosecution commend itself to the court, thus leaving innocent persons open to proceedings. It is always to be remembered in such a case that the court, equally with the Director of Public Prosecutions, would be free to take a view of the meaning of s. 76 different from that taken by the Minister's advisers, and also that if legal proceedings were instituted against the individual councillor, even unsuccessfully, it would be that individual, and not the Minister using public funds, upon whom the burden of defence would fall.

It would have been quite easy for the Minister in the case before us to make it clear that his own advisers did not agree with the advisers of the trade union, and that for his part he would not have supposed that disability existed, but at the same time to say that he removed the disability in order that individuals concerned might not be exposed to any risk.

Although it does not really matter, from the point of view of what we have just been saying on the merits, we may add a further word upon the issue of law. As we have said, s. 76 (2) (b) contains an exemption for an employee of a public body, and there is a definition of public body later in the Act. This definition uses the verb "include" and therefore, say the Minister's advisers, there may be other sorts of public body in addition to those expressly enumerated. So far so good; we are prepared to concede also that the enumeration, used in the definition of those expressly mentioned, does not carry with it any implication that other forms of public authority (if any) must be of the like type. Nevertheless we ourselves think it very doubtful whether the British Transport Commission (or the Railway Executive before the Railway Executive was abolished) would have been considered by the courts in a disputed case to be a "public body" within the meaning of s. 76 of the Act of 1933. We should, that is to say, have taken the same view as the legal advisers of the men's trade union, and have supposed that the penal provisions of s. 76 did apply to them, and therefore that it was not safe for them to assist the local authority of which they are members in the discussion of this particular matter, unless the disability imposed by the section was removed by the Minister. We hope that, even now, the Minister may see his way to take this course, which can do no harm and seems an evident piece of justice to the men in question. Why should those men be expected to do what their trade union's legal advisers say is risky, or (to put the matter in a homely way) to back the chance that the Director of Public Prosecutions will agree with the Minister's advisers?

SUBSISTENCE ALLOWANCES

Different responsibilities and degrees of skill attach to different jobs and obviously justify different rates of remuneration. A subsistence allowance, on the other hand, is intended only to reimburse expenses incurred in the performance of official duties, and in relation to those local authority officers grouped within the administrative, professional, technical and clerical grades the principle is accepted that such reimbursement should be made without regard to rank or remuneration. (There is a certain amount of class distinction regarding travelling, but it does not extend to subsistence allowances!) The National Joint Council for the Administrative, Professional, Technical and Clerical Grades is, however, only one of a number of bodies having power to determine allowances: in the past such bodies have formulated their scales independently of one another and the result, not surprisingly, has been the production of a wide variety of figures all supposed to be a true assessment of the same cost.

The unfortunate local authority treasurer must therefore master the intricacies of many different scales. This not only makes life unnecessarily difficult for him but, when payments are made, creates a sense of injustice in the minds of the recipients. Thus a chief officer who accompanies his chairman to London, stays at the same hotel and probably on the whole spends more money than his fellow traveller, receives on his return a sum of £1 16s. for an absence of 24 hours whereas the accompanying member is entitled to £2 10s.

We give figures showing the extraordinary position which now obtains:

A. National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services.

(a) Allowances when officer is travelling in the performance of the normal and routine duties of his post

	s.	d.
Bed and Breakfast	15	0
Breakfast	4	0
Lunch	4	0
Tea	2	6
Dinner	6	0

Where an officer travels by train he is allowed to charge the cost of the standard train meal.

Both tea and dinner allowances cannot be paid in respect of the same evening's work (unless it be a Saturday or Sunday): the officer must work after 8.30 p.m. to qualify for the dinner allowance.

(b) Allowances when travelling in the performance of occasional or exceptional duties involving overnight absence

	£	s.	d.
First day and subsequent days ..	1	1	0
First night and subsequent nights ..	15	0	

(c) Allowances when travelling in the performance of occasional or exceptional duties involving absence of more than eight hours, but not involving absence overnight

	s.	d.
Breakfast	4	0
Lunch	4	0
Tea	2	6
Dinner	6	0

The same variation about train meals applies also in this case.

These rates apply in all cases except attendance at conferences and courses involving a prolonged stay away from home.

In special circumstances of this kind local authorities are required to meet the out-of-pocket expenses reasonably incurred.

B. Local Government (Members' Allowances) Regulations, 1954.

So much for the officers. The allowances payable to council members present quite a different picture. They are set out in S.I. No. 397, 1954, and entitle the member to claim:

	£	s.	d.
(i) In the case of absence overnight in London or when attending certain annual conferences	2	10	0
In the case of any other absence overnight (The above are deemed to cover a continuous period of absence of twenty-four hours.)	2	2	0
(ii) In the case of an absence, not involving an absence overnight:			
More than four but not more than eight hours	7	6	
More than eight but not more than twelve hours	12	6	
More than twelve hours	20	0	

It will be noted that there are two main differences from the officers' scale. The amounts allowed are more generous and the method of computation differs. We have made comparisons showing the differences which can arise in the application of the scales:

	Member £ s. d.	Officer £ s. d.	Difference in favour of Member s. d.
Absence in London or at certain conferences for twenty-four hours	2 10 0	1 16 0	14 0
Absence elsewhere for twenty-four hours	2 2 0	1 16 0	6 0
Absence for more than four and less than eight hours ..	7 6	4 0	3 6
Absence of more than eight and less than twelve hours ..	12 6	6 6	6 0
Absence of more than twelve hours	1 0 0	12 6	7 6

In making these comparisons our readers will notice at once that certain assumptions have been made. This was necessary because the two scales have no common basis: the figures quoted for officers are based on actual experience and in our opinion give a fair comparison.

If there are differences in the treatment of members and officers at least we could hope that all public representatives would be treated alike. But this is not the case. The ideas of the Government, as expressed by the Minister of Housing and Local Government in S.I. No. 397 do not agree with the ideas of the Government as expressed by the Minister of Health in S.I. s. 666 and 1892 of 1952 and 1418 of 1954 which regulate the reimbursements to be made to members of hospital boards and management committees. We do not know whether the two latter classes of public representatives are regarded in Whitehall as worthy only to partake of inferior meals and enjoy inferior accommodation but this inference could be drawn from a comparison of the scales fixed for them and those applicable to local authority members. Thus the hospital board member is entitled to 37s. 6d. only for 24 hours' absence unless he goes to London when the figure is increased to 45s. 0d.; an absence of between four and five hours entitles him to claim precisely

nothing whereas the local authority member can receive 7s. 6d. For any absence of more than eight hours the hospital member gets only 9s. 6d. which can leave him as much as 10s. 6d. worse off. These differences seem particularly foolish when, as is often the case, the same person is a member both of a local authority and of a hospital board or management committee. It is true that when meals are taken on trains there are concessions which go some way to removing the anomalies but we are not really concerned with amelioration: the point we make is that the mere existence of two scales giving different results is nonsensical. As, however, S.I. 1418 of 1954 was made as recently as October 26, becoming effective from November 1, it does not appear that the two Ministries concerned are yet prepared to co-ordinate their calculations and regulations.

As with members so with officers. There is no uniformity of treatment. Not only is the method of computation different but in some cases status is adjudged to affect the amount of expenditure incurred whilst in others a comprehensive egalitarian principle applies. The National Joint Council scale previously quoted applies this principle: in other respects, however, it is quite vague. For instance, an officer travelling in performance of the duties of his post, or a candidate for an appointment, is entitled to 4s. 0d. for luncheon: it is left to local discretion to decide what period of absence qualifies him for payment. (In the Probation (No. 2) Rules, 1952, which apply the same figures to probation officers, definite time limits govern the payment of the various allowances.) Again, a "travelling" or "outside" officer is entitled to claim in respect of ordinary and routine duties at half rates. This regulation can give rise to a number of difficulties, particularly in counties. For instance, it is the practice in certain cases to regard the immediate area of employment only as the place where normal and routine duties are carried out; thus a nurse attached to one health division would claim at the full rates for a visit to county hall. Not all authorities interpret the provisions in the same way however.

The scales for officers of the National Health Service distinguish between higher and lower grades. For example, officers receiving salaries of £810 *per annum* or over are entitled to 37s. 6d. for an absence of 24 hours, those receiving less than £810 get only 30s. 0d. These allowances compare with the uniform figure of 36s. 0d. for local authority officers.

Again there are differences when we look at figures coming from the Home Office. By some process of reasoning which we do not follow the lodging allowance for part-time civil defence instructors and volunteers has been fixed at 28s. 0d.; a figure in splendid isolation which has no known connexion with any other determination. Scales for the police vary according to rank, but can be regarded as no more than a general guide in view of the overriding power of the chief constable to grant either greater or lesser amounts than those prescribed if satisfied that there is cause so to do.

We referred on a previous occasion to the need for revision and co-ordination of the present tangle of anomalies and some improvements were subsequently introduced but, as we have shown, much remains to be done. In addition the continued rise in the cost of living means that the scales of the National Joint Council for local authority officers are now completely out of date. These figures were determined in 1947 and, except for minor amendments, remain unaltered. An increasing number of authorities are ignoring the agreed scales and fixing their own amounts; if the Joint Council does not wish its scale to become a dead letter it is high time a revision commenced. In such an examination regard should certainly be had to other scales and the council should make up its mind on a number of matters of general principle such as:

1. The framework of the scale and the need for improvement of the present vague provisions.
2. The new figures to be substituted for the present inadequate amounts.
3. Whether all classes of officers should be treated alike:
 - (a) irrespective of salary or status, or
 - (b) irrespective of employer (local authority, hospital board, probation committee, etc.).
4. Whether all public representatives should be treated alike.
5. Whether officers should be treated on the same basis as members.

We appreciate that the National Joint Council has no power to determine finally certain of these questions: nevertheless a pronouncement of opinion from such an important body, supported possibly by similar opinions of other Joint Councils and similar bodies would carry much weight. It could do much to achieve a limited uniformity and in the wider field push government departments into rationalizing the existing sets of un-co-ordinated regulations.

ADDITIONS TO COMMISSIONS

LINCOLN (LINDSEY) COUNTY

Mrs. Elizabeth Napier Downend, Holly Farm, Bleasby Moor, Market Rasen.
 Richard Fieldsend, Old Rectory, Aisthorpe, Lincoln.
 John Robert Hewson, White House, Donington-on-Bain, Louth.
 Mrs. Gwendoline Margaret Morton Nicholson, Mount St. Mary, Louth.
 Mrs. Doreen Gertrude Palethorpe, Claythorpe Manor, Alford, Lincs.
 Charles Pogson, 73, Church Lane, Scunthorpe.
 Miss Phyllis Mary Helen Pritchard, M.B.E., Glendower, S. Thoresby, Alford.
 Mrs. Anne Day Rundell, 65, Morton Terrace, Gainsborough.
 Major Edmund Charles Reginald Sheffield, Normanby Park, Scunthorpe.
 Mrs. Eileen Muriel Sowden, B.E.M., 40, West Common Gardens, Scunthorpe.
 Mrs. Margaret Alice Wilkinson, 28, Newland Avenue, Scunthorpe.

SOMERSET COUNTY

Mrs. Kathleen Blanche Mabel Barker, 53, Park Road, Keynsham.
 Harold Percival Bevan, 18, Grove Road, Milton, Weston-super-Mare.
 Maurice Graham Blackburn, 4, Kelston Road, Keynsham.
 Mrs. Nina Joyce Broadmead, Enmore Castle, Bridgwater.
 Geoffrey Barnabus Butter, Max Mills, Winscombe.
 Lt.-Col. Arthur Birney Davies, Orchards, Tatworth, nr. Chard.
 Donald Joyce Farley, Joyce's Farm, Preston, Milverton.
 John Keith Froud, Old Parsonage, Farrington Gurney, nr. Bristol.
 Harold Lawrence Godfrey, Lorena, Worston Road, Highbridge.
 John Douglas Graham, The Manor, Stawell, Bridgwater.
 John Richard Clucas Hayward, Hewish Lane, Crewkerne.
 Hugh Cam Hobhouse, Wellands House, Pilton, nr. Shepton Mallet.
 George Lee, 24, Darby Way, Bishops Lydeard, nr. Taunton.
 John Philip Merson, Farrington, North Petherton, Bridgwater.
 Mrs. Mary Millicent Smail, Rock Farm, Exebridge, Dulverton.
 Lady Alice Kathleen Violet Stanley, Woodlands Vicarage, Frome.
 Henry Folliott Scott Stokes, M.C., 104, Above Town, Glastonbury.
 Frederick Charles Francis Walwin, Bromstone, Welshmill Road, Frome.

SWINDON BOROUGH

Mrs. Valerie Margaret Stuart Creighton, 8, Grovelands Avenue, Swindon.
 Mrs. Phyllis Maud Macpherson, 36, Westlecot Road, Swindon.
 Mrs. Violet Gwladys Netherpton, 23, Caulfield Road, Swindon.

WORCESTER CITY

Denis Byng Caughey, 93, Park Avenue, Worcester.
 Miss Nancy Dorrell, 20, Hallow Road, Worcester.
 Harold Grainger, 18, Comer Road, St. Johns, Worcester.
 William Francis Holloway, Rose Bank, London Road, Worcester.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Jenkins and Birkett, L.JJ.)

PRESCOTT v. BIRMINGHAM CORPORATION

November, 23, 24, 25, 30, 1954

*Local Government—Transport undertaking—Scheme to provide free travel for old, needy persons—Legality.*APPEAL by defendants from VAISEY, J., reported, *ante*, p. 714.

The defendant local authority was authorized by statute to operate a transport undertaking and to charge such fares to passengers travelling on their vehicles as they thought fit, subject to any prescribed statutory maxima for the time being in force and subject also to their obligation under the Road Traffic Act, 1930, to adhere to any scale of fares fixed by the licensing authority. With the consent of the licensing authority but without any statutory authority, the local authority provided free travelling facilities at certain hours on tramway cars and omnibuses within their district for a limited class of women over 64 years of age and men over 69. The scheme was estimated to cost £90,000 *per annum*, and, as the transport undertaking was being run at a loss, that cost would be defrayed out of the general rate fund. The plaintiff, a ratepayer, claimed a declaration that the scheme was illegal and *ultra vires* the authority who were not entitled to use any part of the general rate fund for operating it. VAISEY, J., granted the declaration.

Held, the local authority was not entitled to use their discriminatory power as proprietors of the transport undertaking to confer out of the rates a special benefit on a particular class of inhabitants whom they thought deserving of such assistance. In the absence of clear statutory authority for such a proceeding (which a mere general power to charge differential fares was not), it was illegal on the ground that it would amount simply to the making of a gift or present in money's worth to a particular section of the local community at the expense of the general body of ratepayers. *Appeal dismissed.*

Counsel: Michael Rowe, Q.C., and Harold Lightman for the authority; F. Blennerhassett for the plaintiff.

Solicitors: Sharpe, Pritchard & Co., for J. F. Gregg, town clerk of Birmingham; Stanley & Co., for R. Evans Parr & Co., Birmingham. (Reported by F. Guttman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Karminski, J.)

FOX v. FOX

November 3, 1954

Domestic Proceedings—Procedure—Party appearing in person and giving evidence—Inability effectively to cross-examine—Party's case not put to witnesses on other side—Duty of court—Magistrates' Courts Act, 1952 (15 and 16 Geo. 6, and 1 Eliz. 2, c. 55), s. 61.

By s. 61 of the Magistrates' Courts Act, 1952, where in any domestic proceedings it appears that a party who is not legally represented is unable effectively to examine or cross-examine a witness, "the court shall ascertain from that party what are the matters about which the witness may be able to depose or on which the witness ought to be cross-examined . . . and shall put . . . to the witness such questions in the interests of that party as may appear to the court to be proper."

At the hearing of a complaint by a wife under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, that the husband had deserted her, the wife was legally represented, but the husband was not. The wife gave evidence that the husband had left the flat where they were living together in August, 1953, that he had returned in April, 1954, and had left again on July 17, 1954, taking with him two-thirds of the furniture. The husband asked only one question of the wife in cross-examination; he then himself gave evidence to the effect that he had returned in April, 1954, on condition that they moved to another flat, but that when he had found one the wife refused to move with him, and that he wanted her back. These matters were not put to the wife. The court found the wife's case proved and made a maintenance order in her favour.

Held, in the circumstances, it was the duty of the court under s. 61 to put the husband's case to the wife, to see what her answers were, and then to adjudge the case on all the information before the court; the present case had not, therefore, been duly tried, and the order for maintenance must be set aside and the case must be remitted for re-hearing by a fresh panel of justices.

Counsel: R. L. Halpern for the husband; D. R. Ellison for the wife.

Solicitors: H. Rose; S. Coleman.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

JONES v. JONES

October 28, 1954

Husband and Wife—Wife's summons for maintenance—Defence of reasonable belief in wife's adultery—Need for notice and particulars. APPEAL by the wife against an order of the Flintshire justices.

On June 29, 1954, a summons was issued against the husband on the wife's complaint that on and before that date he had been guilty of wilful neglect to provide reasonable maintenance for her. At the hearing of the complaint the wife was cross-examined as to her relationships with certain other men over the previous fourteen years, and the husband produced a note dated April 27, 1954, written by the wife, in which it appeared that there had been a quarrel between her and the husband on the night before. In it she stated: "You told me to clear out and I have now cleared out. I know [H.D.] wants a housekeeper and that is where I am going." It was not disputed that she went to H.D.'s house on that date and had remained there until the date of the hearing. The justices dismissed the complaint, giving as their reason that they accepted the husband's evidence "that the wife's conduct induced a bona fide reasonable belief in the wife's adultery."

Held, where in answer to a complaint made by the wife under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the husband, although he did not assert that she had committed adultery, asserted that he reasonably believed that she had committed adultery, proper and particular notice of the substance of his assertion should be given to the wife, and the case would be remitted for re-hearing by fresh panel of justices.

Counsel: H. E. Hoosen for the wife; R. G. Waterhouse for the husband.

Solicitors: Lovell, Son & Pitfield, for Walker, Smith & Way, Chester; Jacques & Co., for Cyril Jones, Son & Williams, Wrexham.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

COOPER v. COOPER

October 9, 1954

Desertion—Constructive desertion—Expulsive words—Previous cruelty charge dismissed—Repetition of evidence relating to expulsive words—Estoppel.

APPEALS by the wife against orders of Edmonton justices.

The wife left the matrimonial home on April 2, 1954, and, on her complaint to the justices that the husband had been guilty of persistent cruelty towards her, a summons was issued against him. The complaint was heard on April 23. The wife gave evidence of physical violence and quarrels and produced to the justices two notes. In one her husband had told her to "clear out" and in the other, dated March 27, he had told her to "get out." After producing the latter note, the wife said in evidence: "I said I would go in my time not his. He kept on saying 'pack your bags and get out.' I thought it was not any good going on like this, so I left." She admitted that the notes were written because she had demanded that the husband put in writing what, she alleged, were his frequent words to the same effect. She alleged that this course of conduct by the husband had caused injury to her health. No other evidence was called for the wife, and the complaint was dismissed on a submission that the husband had no case to answer. On May 11 a further summons was issued against the husband on the wife's complaint that he had deserted her. As particulars of desertion the wife's solicitors stated, by letter dated May 27 that, apart from the notes "clear out" and "get out" signed by the husband, he drove her from the matrimonial home by expulsive words and conduct. At the beginning of the hearing of the complaint on May 28, the wife produced again the note dated March 27, and the husband objected that the wife was attempting to re-open the hearing which had taken place on April 23. The justices ruled that the evidence was inadmissible. The wife was, therefore, unable to adduce any evidence which would be accepted as admissible and her complaint was dismissed.

Held, the evidence given by the wife on April 23 of expulsive words was given as part of the background of her case, and, in so far as it was specifically directed to any issue, was directed to the possible effect on her health; the dismissal on that date of her charge of cruelty did not estop her from adducing appropriate evidence on the later charge of desertion, even though that evidence had been given on the charge of cruelty; and the case must be remitted to the justices for re-hearing.

Counsel: R. W. Vick for the wife; G. J. Shindler for the husband.

Solicitors: R. Crane; Craigen, Hicks & Co.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

In Lighter Vein.

A, B AND C

(A Lawyer's version of the original short story by Stephen Leacock.)

By W. H. LAWTON, LL.M.

Anyone, who has studied legal examination questions, will realize that the law is concerned with the activities of three men, A, B and C. Now to one who has followed the history of these men through countless pages of problems, watched them sue and libel each other, they become something more than mere symbols. They appear as creatures of flesh and blood, living men with their own passions, ambitions, and aspirations like the rest of us.

The form of the question in which they appear is generally of this sort :

"A without B's permission takes B's horse for a joy-ride and returns it injured through over-riding. Discuss," or "B owes a gambling debt of £10 to A. A (who is well aware of the decision in the William Hill case) threatened to report B to Tattersalls if B did not pay the debt," or again "A proposed to stay at the Lion Hotel newly bought by B from C . . . etc."

The occupations of these men A, B and C are many and varied. No task is too humble for them and none too difficult. They revel in a problem for the sheer delight of its complexity. There is not one single crime so infamous that they would not stoop to it. Murder, larceny, rape, arson, indecent assault, embezzlement, sodomy, incest, child destruction, share pushing and bribery are all part of their everyday work. A has been known to rob B and murder C in the same question. You might say that they are professional actors. Their work is to provide difficult situations for examiners to ask questions about. Nor do their activities stop at crime. In every branch of the law they are equally at home. They are just as happy playing at trustees and beneficiaries as they are at playing principals and agents or plaintiffs and defendants. They are, however, happiest in a problem where A sues B and C, B sues A and C, and C sues A and B. They dabble in Roman Law, Jurisprudence, Constitutional Law, Legal History, Equity, Company Law, Contract, Criminal Law, Tort, International Law and Conveyancing. Their versatility is unbelievable. They are truly ubiquitous. Nothing daunts them. No problem is too great or too complicated. They positively delight in the difficulties the student has in sorting out their legal tangles. Their leisure hours are spent in reading such works as *Halsbury*, *Gibson's Conveyancing* and *Leages' Roman Law* so that they may find exceptions to the rules of law and thus make their questions more infuriating.

A, B and C are ageless and timeless. They may play the parts of infant beneficiaries or doddering testators in extremis. They are not out of place flying jet bombers nor slave trading in Rome. Though sometimes when the scene is set in Roman times they go under their alternative names of Antony, Balbus or Caius. They possess every type of human skill. They are capable of playing the parts of University professors, street vendors, Stock Exchange jobbers or common informers with the same success.

When they venture into the fields of Private and Public International law, they cheerfully become Spaniards, Lithuanians, Moroccans, Mohamedans or Bolivians.

One of their most striking characteristics is that they are immortal. Despite the fact that a great deal of their time is spent in murdering each other, to say nothing of maimings, indecent assaults, malicious woundings, false imprisonments and other lesser harms they are pleased to inflict on each other, they always survive to appear in the next question.

I remember in one Criminal Law paper, B, after having been brutally stabbed to death by A in the first question, made a second appearance in a later question to act as a receiver of stolen goods ; and yet despite, no doubt, a stiff prison sentence, there he was in the last question cheerfully selling his grandmother as a white slave.

Their wardrobe must be enormous and they can change into any type of costume with a speed which would do credit to Gypsy Rose Lee.

A, B and C's performances are always superb. No other actor has ever achieved such artistic and sensitive characterization; no playwright has conceived such drama as their masterpieces, which modestly appear under such titles as "Real Property and Conveyancing Paper II, question 3."

Perhaps the student who has spent so long discussing the liability of A, B and C, sorting out what crimes they have committed, assessing their measure of damages or finding what equities they possess, has wondered what these men are really like. What sort of persons are A, B and C ?

Well! that is a very difficult, if not impossible, question to answer. They play so many different parts and are so continuously engaged. Do you know that they are employed practically the whole year round? What with the Law Society Examinations, the Examinations of the Council of Legal Education, University examinations and in between these, terminals and tutorial classes, they have very little free time. Like all true artists they become so engrossed in their work that their true selves become submerged—practically extinguished. Then again to make the task of getting to know them more difficult they refuse to grant interviews. Apparently, a condition of the terms of employment with the examination Boards compels them to strict seclusion for security reasons. You can imagine what would happen if it were possible for a student to get C drunk before his final and so get to know the secrets of the script.

The only way to get to know them is by studying the parts they play, and feeling it would be helpful to students in solving examination problems if something of their likes and dislikes was known, I have just completed a survey of the examination questions. The following conclusions have resulted :

A is a full-blooded blustering fellow, of energetic temperament, hot-headed and strong willed. He is always the top-dog and the man of action. He is the natural plaintiff, the doer of a civil wrong or the perpetrator of a crime. If there is any false imprisonment he is the jailor ; if there is any slavery, he is the slave trader ; if there is any suing to be done, A is the man. How often do questions start "A sues B" or "A calls B a filthy liar." Yes, always this extrovert has got to be throwing his weight around. In property law, A likes to be the estate owner in fee simple absolute in possession, though he is sometimes reduced to the part of tenant for life. He grants leases, forecloses mortgages, reserves easements and generously settles property. Always one gets the impression that he is smug and self-satisfied. He is the suer and the doer. It is true that sometimes he appears to be passive and he lets C or B sue him and that sort of thing, but this is where you have got to be careful. His motives for this are absolutely shocking : he is either trying to trap you or in his conceit he is showing that he is capable of performing these parts.

B, on the other hand, is essentially the passive member of the trio—the natural defendant or the sufferer of a wrong. He is quiet, gentle and contented, he simply loves being sued, attacked, cheated, defamed and otherwise sat upon. Always content, he does not mind being the remainder-man and having to wait for A to die before he gets his estate. In Roman Law he is the cheerful slave. He is content to be an agent, a servant, a clerk, a son, or a principal in the second degree. B is also, of necessity, a philosopher, no matter what abomination A commits against him he remains unruffled and unperturbed.

Poor little C, he is an undersized, frail man, almost a non-entity. In fact, in many questions he does not appear at all, A and B having grabbed the only two parts. Consequently, while A and B are fighting it out in question 1, C is reading his lines hoping for a part in a later question. He gets the minor parts, such as accessory after the fact or tenant in tail after possibility of issue extinct. In partnership law, he is the junior partner; in litigation he is the second defendant; in contract he is a third party, and in equity he is a second mortgagee. It must be said in C's favour that occasionally on an assignment of an equitable interest he craftily does B out of his priority by giving notice to the trustees.

In Lighter Vein.

“CALL THE NEXT WITNESS!”

By CHARLES BREAKS

“Call the next witness!” Confidently he steps up into the witness box. You have brought him to prove the taking of the identification mark and number of a motor car involved in a case of dangerous driving—in fact there is a further charge against the defendant of failing to stop after an accident in which a person received injuries. The defendant has pleaded “Not Guilty.”

Now the questions you are going to put to your witness are few, but vital.

Confidently he takes the oath and briskly answers the preliminaries regarding his name, address and occupation; he pauses and you help to inspire him by saying “Now, in your own words will you tell the magistrates what you saw and did on the evening in question.”

The witness appears delighted to do this, because, with a pleasant smile he says that on that evening he returned home from work at 5.45 p.m. and had his tea; he then had a look at the evening paper—he remembers reading the paper because “Green Emerald” which he had backed in the 3.30 that day, was just beaten by a head.

“Yes, yes, please get to the point” you say.

“Right” he answers—“I then went into the front room to make out my Pools coupon, I always do that on a Wednesday night.” By now the magistrates are beginning to wonder where all this is leading to, but he continues “and when I’d finished filling in my coupon I went into the front garden.”

Ah! now we are getting somewhere, everybody thinks. But wait! “Yes, yes, what did you see whilst you were in your front garden” you hopefully say to him.

“I leaned on the gate and just then, Sandy, that’s one of my neighbours, passed; he said “How do you do, George?” and I said “How do you do, Sandy?” The magistrates’ clerk now thinks it wise to intervene—“You are wasting time, will you kindly get on with your evidence and keep to the point!”

You also intersperse with “What did you see then?”.

Time prevents us from going further into the thrilling exploits of these noble men, A, B and C. I sincerely hope that one day they will be pensioned off by the examiners and allowed to retire to the vast landed estates which they have acquired over the years. I, of course, refer to Blackacre, Whiteacre and Greenacre. Here they could live comfortably on their ill-gotten gains, because I think they have proved that crime really does pay.

Already other actors have shown their willingness to take the places of A, B and C. X, Y and Z and the three foreign gentlemen, alpha, beta and gamma, show great promise. There are other hams which occasionally have been used by A, B and C to do the hack work—D and E have been moderately often before us. Indeed, I am reminded of one tort question in which the cast comprised not only A, B and C but also D, E, F, G, H, I, J and K. Again there are others, who specialize in character parts—for instance, T is the greatest testator actor of the day. He has become typed in this part and attempts no other.

One final word of warning, do not rely too much on A, B and C’s retirement. They are good for many years of happy litigation yet and you will no doubt be meeting them again in the not too distant future.

Not in the least put off his stride by the inference that he is wasting time, he continues “I saw Sandy cross the road to the newspaper shop, he goes there you know for the last edition.” “Dearie me” exclaims one of the magistrates, looking rather gloomily at you “How long have we to listen to this, we seem to be going further away from the point than ever!”

You assure the worthy justice that you are also of that opinion and with a slightly worried expression you look towards the clerk, the bench and the defending solicitor and ask if you may lead the witness. Everyone agrees, to your relief.

“All you have to tell us” you now say to the unperturbed gentleman in the box “Is, did you, whilst in your garden, hear a crash?” “Yes, a loud crash” he replies; “a very loud crash, an alarming crash, if I may be allowed to say so” he goes on.

“Did a motor car stop opposite your gate for a short time immediately after that crash and did that motor car appear to have a damaged nearside wing?” You look towards the defence as you say this—but there is no sign of protest.

“Yes, I saw a motor car” the witness replies—“a very nice dark blue one but I don’t know about its wings—if you mean its mudguards, well, I didn’t notice whether they were damaged or not.”

“Did you take its number?”

Triumphantly, the witness continues, “When I heard the crash I was leaning over my front gate and I still had my fountain pen in my hand, after making out my coupon—so I wrote down the number of the blue motor car.”

You hold up for everyone to see, an old envelope “Was this identification mark written on this envelope by you at that time?” The witness, confidently, “It was!”

For the first time the defence stands up and asks to see the incriminating document that bears the letters and number. The clerk assents and after a brief scrutiny the defending solicitor hands it back and asks if he may say something that will save

further valuable time. "By all means" says the clerk, and all the heads on the bench nod in approval.

The defending solicitor looks at you and then at the bench—"Your Worships" he commences "we have had inquiry made and find that the identification mark written down by this witness is that of a motor lorry, belonging to a firm in the Midlands and which for months has lain dismantled in their garage—and in due course we will produce a document to prove this and that being so, I have NO QUESTIONS TO PUT TO THIS WITNESS."

In Lighter Vein.

WHO WAS SHE?

By PAUL T. W. BUTTERS

Over the past 25 years I have built up a comfortable advocacy practice in the busy little market town of Storrington, and I have got so used to practising within the limited radius covered by the justices of my local bench that I take a great deal of persuading to travel to a foreign court—and, as far as I am concerned, any court more than 20 miles from Storrington is a foreign one.

My wife Millicent holds different views. A confirmed traveller herself, she has been urging me for the past 20 years or so to spread my tentacles a little further and at least make an occasional journey into the next county. Up to now, her blandishments have met with little success, and as a matter of fact, she herself is the principal reason why I prefer to stay at home. Though she would be the last to admit it, she is quite a fan of mine and spends more of her time than she can really spare listening to the Old Man saying his piece to the local beaks in Storrington Town Hall. And I like it—there can be no denying that. Often, when I have found myself in difficulties, I have been grateful for her moral support as she sits only a few seats away from me, still the handsomest woman in Storrington, smiling placidly and obviously confident of my ultimate victory.

Still, the fact remains that it was Millie who persuaded me, against my better judgment, to make the hazardous journey into the next county to undertake the defence of one Purbright before the Warmington beaks, though I doubt if even Millie's undoubted charms would have tempted me into that indiscretion if I hadn't suddenly remembered that old Jackie Millington was the chairman of that particular bench. Jackie Millington—or to give him his correct title, Lieut.-Colonel J. R. H. Millington, D.S.O.—though some years my senior, had been a particular crony of mine in the old days, and though we hadn't seen each other for a long time I thought this might be a good opportunity of giving him a few tips on how to run his court and to show him, at the same time, what a good advocate I had become. So, inspired by these base motives and the honeyed words of my lady wife, I made the trip to Warmington and became involved in a case which I am not likely to forget for a very long time.

I have particular reason to remember the constitution of the Warmington bench that morning. Apart from Jackie himself, there were two nondescript-looking chaps who looked as if they were likely to do anything the chairman advised them to do; and a woman who looked as if she would listen politely to what the chairman had to say and then do exactly what *she* wanted to do and nothing else. But it wasn't only because she looked potentially the strongest character on the bench that I directed most of my attention to her. There was a stronger reason than that, for she bore an uncanny resemblance to my wife. She might have been Millie's elder sister, and the resemblance was all the more marked because she wore the same sort of clothes that Millie favoured, from the smart, grey costume

Just one of those things; nonplussed, but not showing it, you quickly glance at the other statements; yes, our voluble witness has written down the correct identification letters, but instead of the number 2364 he had scribbled 2634.

"Did you see the driver, then?" asks the magistrates' clerk—"No" replies the gentleman in the box and amidst a hum of voices the clerk remarks that "there is no point in this man continuing further with his evidence," you agree and it is with a feeling of some relief hear the command "Call the next witness!"

to the absurd little hat with a pert little feather shooting out of the front of it. I remember thinking it a rather incongruous appendage to meet in a court of law but I was to remember that feather for a long time.

I bowed politely to the bench and scored my first success when old Jackie nearly ruined an impressive entrance by falling over backwards at seeing me so far from my native heath. I should not have been surprised if he had extended his hand and said: "Dr. Livingstone, I presume?" but he recovered his poise quickly, gave me a short, judicial nod, and assumed his seat with a dignity which became him well, belated though it was. For her part, the lady member of the bench gave me a charming smile which reminded me more than ever of Millie and made me feel at home at once. After all, I was not going to feel half so lonely as I had feared on this foreign field.

The actual facts of Purbright's case have nothing to do with this story and I shall have very little to say about them. He was charged with stealing a watch from a jeweller's stall in Warmington Market on a busy Saturday afternoon, and the case immediately resolved itself into one question only—the identification of the thief. The prosecution said he was Purbright: we said he wasn't. It was as simple—or as difficult—as that.

The prosecution called three witnesses to prove their case. It is never as easy as it sounds to identify a stranger with any degree of certainty, and anyone with any experience in a criminal practice will tell you that the more emphatic and dogmatic a witness becomes the easier he (or she) is to cross-examine. Yet it is, nevertheless, a type of cross-examination that has to be embarked upon with the greatest caution. One injudicious question might well produce an answer that opens the flood-gates against you and brings your defence toppling about your ears. Twenty-five years in the law had at least taught me that lesson so I put my questions very cautiously indeed, and as I put them, I found myself looking more and more often in the direction of the lady member of the bench and watching that eloquent little feather in her hat. That feather had a positive fascination for me, and if I had any doubts about whether to put a question or not, I always looked to that little piece of nonsense for guidance. Sometimes it would be bobbing up and down in an obviously affirmative fashion and I would put my question: at others, it described a sideways (or negative) movement and my question died on my lips. It was uncanny: that feather seemed to be divinely inspired. It appeared to know what I was going to ask before I knew it myself. Five times it nodded affirmatively and I got the answer I wanted; twice it waved sideways in a negative fashion and I took due warning. And it was never wrong; of that I am certain. Either of those two questions which I left unasked would, I am sure, have got my client six months.

At the conclusion of the prosecution's case, Purbright went into the box and stoutly denied all the charges against him.

He was wise enough not to try and rely on that dangerous defence, an alibi. In any case—like most of us in such circumstances—he hadn't got one which anybody was likely to believe; for the phoniest alibis usually sound the most convincing and the genuine ones the most unbelievable. Still, he sounded convincing enough and I felt that he was making a reasonably good impression. It was not until he was nearing the end of his evidence that I became conscious of a serious omission on my part: I had forgotten to check with the police whether he had a record or not. When taking my client's instructions I had, as a matter of course, asked him if he had ever been in any trouble before and he had assured me that he had not. But we lawyers are cautious—not to say suspicious—chaps, and we invariably get our client's assurance confirmed unofficially by a friendly policeman before the case opens. For some clients (even, on occasion, our own) have much in common with the ostrich. They will metaphorically stick their heads in the sand and assure you that their characters are as pure as the driven snow when they know perfectly well that they have a police record as long as your arm.

So here was my final problem. Should I rely on what Purbright had told me and ask him to confirm on oath that he had never been in trouble before—or shouldn't I? I knew he would stoutly affirm that he had an unblemished character, but if, by any chance, he *had* been in trouble before, the police would be perfectly entitled to tell him so in cross-examination. And that would undoubtedly be that, and Mr. Purbright wouldn't be going home that night. Still, he seemed honest and, at the same time, intelligent enough to have told me the truth and I had already made up my mind to ask the question when I glanced in the direction of that infallible feather. I really had

no doubts about it myself and my glance in its direction was little more than a formality.

It was then that I got the shock of my life. You have heard of a feather in the wind, of course? Well, this was a feather in a positive gale. It was swaying about and indicating a negative with such an hysterical fervour that for a moment I was shaken out of my placid calm. Then, when I had recovered, I sat down quietly without asking my client to confirm his spotless record.

In the result, I got Purbright off and received two shocks in rapid succession from which I am only now slowly recovering.

The first was when Purbright, after thanking me for all the trouble I had taken and assuring me that justice had been done on this occasion, apologized for forgetting to tell me that he had been convicted for larceny by this very court some five years before.

The second was while I was having lunch with Jackie Millington. Though generous enough in his congratulations, he seemed to think that I had had the run of the ball all through.

"Everything went your way from the first, you know," said Jackie, "and three was always your lucky number."

"Three?" I said, puzzled.

"The number of beaks who tried your case, nitwit," Jackie explained, with all the frankness of an old friend. "And I'll tell you another thing," he went on, "you can thank your stars that they were all men. If there'd been a woman on the bench, your client would probably have got six months."

I goggled at him so long without being able to utter a word, that I really believe poor Old Jackie thought I had gone right off my rocker. And I could hardly blame him—I was thinking along much the same lines myself.

In Lighter Vein.

CASUAL VACANCY

The strident notes of the alarm arouse me to a more than usually reluctant awareness that it is cold and dark. This morning, although it is but 6.30 a.m., I do not dally, but whilst boiling the egg, burn the toast and grab the sandwiches and away. For I am, for the first time, a presiding officer, and it is polling day. For the first time I can order a man to be removed from the station—roll on drunks—and for twelve hours the fate of a councillor is guarded by me.

Outside the cold December rain slashes from a still dark sky and I run for a tram to carry me to the east end of the county borough. "A nasty morning, love, and you not used to them early," accompanies my purchase of a ticket, and I bite on the response, drop my paper overboard, and climb to the swaying bows of the top deck. Everyone has a paper, a wet overcoat, and a large pipe loaded with twist tobacco. I knew it was a long journey but another mile and I will ask the new councillor to provide paper bags on the trams as they do in aircraft.

I arrive with time to spare. A mid-Victorian school, surrounded by factories and little shops; and on its outside lies the grime of decades. The pillars are of stone, the gates of iron, the building of strange shape, and the steps worn. In a cold room a collarless caretaker curses a sullen fire in a huge grate. Round the room are desert scenes with golden suns predominating—the work of Maisie Miller aged seven and Willy Williams aged eight. But the box is there and the booths are there and so are the three poll clerks, all wondering what to do—it is their first poll.

The election is due to the death of Councillor Smith—some say he was contradicted, others that he was given change for a florin when he tendered half-a-crown. Anyway, it was a safe official party seat and the boys expected no contest and saved their strength. But two candidates appeared—representing

"Workless" and "Left Wing" candidates and the official party candidate has to fight. Thus I am in it.

At the town hall they had insisted that all that was necessary was to show how accustomed I was to the routine—nonchalance was the keyword. We fall upon the ballot box like children on a Christmas stocking, and 7.55 it is empty. The policeman strolls in, one of the clerks wanders out with a polling station notice—and wanders in again because he says there is nowhere where he can stick it—stone walls and iron gates.

Nonchalantly, I light the candle ready for sealing, show the box, and take the key on the string. It will not go in the lock—right way—wrong way—no way—7.59 and a knock on the door—a call of "Open up"—"Tape it tight and fiddle the key when opening time comes" suggests the policeman. I duly tape, and am in such a sweat that it nearly puts the candle out. Done—two clerks dive behind the trestle table and I open the door. "Tha't late—Ahm allus fust." I argue the point. He gets his ballot paper stamped both sides, the number is marked off, and I fetch him back from the door as he is leaving with his ballot paper in his hand.

The next voter comes in at 9 a.m.

Meanwhile the clerks have stamped a book of ballot papers, I've tied and stuck notices all over the place. Two voters come in the next hour. One of the clerks brews up on the fire, which is now roaring like a furnace and has scorched one of the silly little desks. We spill the ink all over in moving it.

11 a.m. and the town clerk arrives to inspect, he congratulates me on having a copy of the Guidance to Voters on the outside as well as all the other notices.

As I explain to the clerks, it is only a matter of organization and everything depends on the presiding officer.

Quite a spate of votes now flows in and then slackens. Experience has taught me to judge when the slack times will be, so I leave the station as a factory hooter blows and slip along to replace my lost paper. The newsagent gives me her views of the chances of the respective candidates and I disagree.

When I get back, they have had a surge of voters, have used up the first book of ballot papers, and have also issued half the book of tendered votes. They thought the colour made no difference.

I feel awful.

I have my sandwiches and the clerk brews up again and one of the coal buckets is empty.

1 p.m. and the Workless candidate attends and borrows half-a-crown from me.

No voters.

2 p.m. and the Left Wing candidate attends and sells me a book on *Polygamy amongst Poltergeists*.

Two women attend from the wrong ward and we are as sorry as shipwrecked mariners who see a ship pass them by.

The official party candidate attends and seems frankly appalled at the numbers so far. So are we, but we shall still claim our fees and one of the clerks is even going to include it in his income tax return.

One or two shoppers with baskets and jokes about how easily men earn their money and will we tell our wives what a little we have to do. I point out I have not got one, and after making reference to my loss and the clerks' gain, peace descends again and the lights go on.

4 p.m. and the policeman tells us how he caught a man siphoning petrol; his face when he imitated the mouthful the man got in his sudden surprise is amazing.

One of the clerks fetches tea; I pay for it and the Workless and Left Wing candidates arrive simultaneously, with the tea, so I send out for some more.

We fill in envelopes as far as we can.

A few more voters, and the rain increases outside, and spits

in the large fire. The second coal bucket is empty and the caretaker cannot be found.

Despite the sword of Damocles feeling of the tendered votes I begin to spend mentally the remains of my fee of three guineas. I present the Workless candidate with the book on Polygamy. It does not live up to its lurid dust cover. There should be something against wrongly labelling books and films as there is against the wrong labelling of food.

The clerk brews up again.

There is a steady trickle and the policeman and I check watches. The count is to be at my station, and at 7.45 the returning officer arrives looking well fed, confident and clean. I feel none of these things. Thirty people suddenly arrive and at 8 p.m. I declare the poll closed. This immediately evokes an uproar from two or three soaking wet voters.

Now a scramble to finish, and all complete I turn up with a triumphant smile, my sealed envelopes and a mouth like the bottom of a parrot's cage from licking the gum. Very cunningly I produce a knife; all are present, the tables are extended, and I do some fumbling with the key and slash at the tapes at the same time, all under the eye of the returning officer.

I cut myself.

But the box is open and the counting staff turn and read the two hundred and fifty three ballot papers which I hope are inside. With an air of four adults together clearing up a child's suggestion, the returning officer and the candidates agree to look on the coloured tendered votes as being purer than snow.

Everything checks up.

The other ballot boxes arrive.

The clerks gather all the rubbish together and either burn it or parcel it up for the town clerk. My confidence has returned.

One of the ballot boxes cannot be reconciled with the statement, and I say, nonchalantly, to the returning officer, "Experience is everything in these jobs."

"Yes" he replies, "I noticed in one of your compartments it suggested voting for two candidates."

I creep out into the night and pouring rain.

J.E.S.

In Lighter Vein.

"ONE MONKEY—NO BITE"

It was not until I saw my tame monkey fighting with the cat from next door that I fully appreciated the meaning of *ferae naturae*. Soon, I thought, the case of *May v. Burdett* (1846) 9 Q.B. 101, will no longer stand in isolation in the text books.

With the words of Lord Macmillan in *Read v. Lyons (J.) & Co., Ltd.* [1946] 2 All E.R. 471 ringing in my ears I ran downstairs. By the time I reached the garden the two combatants had separated. The next-door cat was gently licking its wounds on my prize geraniums, and my pet monkey was chewing the washing hanging on my neighbour's line. At that moment my neighbour opened his window, and shouted "You shall not have trespass for the act of a cat." Thinking that these words were familiar I retired to consult a book on Torts.

True enough, my book told me that the good sense of the common law excludes the cat from liability for trespass (*Buckle v. Holmes* [1926] 2 K.B. 125). *Prima facie* an owner is responsible if his animal trespasses. However, most rules have exceptions, and the dog and cat run neck and neck in this respect.

The Dogs Acts, 1906-1928, and the Dogs (Protection of Livestock) Act, 1953, have placed a handicap on a dog, or to be more accurate, on its owner. By the Dogs Acts the owner is liable *absolutely* if his dog does damage to cattle or poultry, and by the Dogs (Protection of Livestock) Act he is liable

criminally if it worries livestock on agricultural land.

A dog in common with other *mansuetae naturae* has the advantage of not making its owner liable for damage if it has not shown any previous viciousness. Thus, a person who has been bitten must bring evidence to show that the dog had a mischievous propensity or in other words that he has bitten someone already.

Suddenly my eyes fell on a heading "Animals *Ferae Naturae*." By a strange coincidence that was the name of my pet monkey. I read on with zest. "A person who keeps a wild animal keeps it at his peril." I did not wait to read further, but dashed out again with my hitherto docile bull dog at my heels. The monkey had now chewed most of the washing to ribbons and was relaxing on the top branch of my apple tree.

My neighbour had obviously taken advantage of the lull to obtain expert legal advice because he poked his head out of the window again and roared "There is an absolute duty of care upon them who keep animals *ferae naturae*." My bull dog seemed to take exception to his statement, and, no doubt, with the idea of proving that some "*Mansuetae Naturae*" can be wilder than some "*Ferae Naturae*," he bit my neighbour's ear.

Ha! Ha! I cried with joy "One monkey—no bite, but one dog—one bite."

"LEO."

MISCELLANEOUS INFORMATION

BLACKPOOL WEIGHTS AND MEASURES DEPARTMENT

As many reports from weights and measures departments show, excellent relations exist between traders and inspectors. In his report for 1953-54, Mr. W. A. Ladds, chief inspector for the county borough of Blackpool, states that many requests were received during the year from traders requiring a special visit from an inspector. In most cases the requests made were by traders new to business who were desirous of ensuring that their appliances were correct and were also in need of information with regard to many of the relevant statutes.

Blackpool, as one of the most popular of holiday resorts, has its special problems. Numerous test purchases were made during the busy periods in the summer months from temporary stalls and fruit hawkers. At holiday times also, evening orders were made extending the closing hours for certain shops to 10.30 p.m. on Saturdays and 9.30 p.m. on other days of the week. During the period of the illuminations the council made an order allowing retail sales of confectionery to be carried on until 12.0 midnight. Orders were also made allowing trading in certain articles on 18 Sundays.

Blackpool has its own Corporation Act of 1952. Among its provisions are some relating to the sale of coal, coke, wood fuel and peat. On the sale of wood fuel, the report says eight dealers have now been registered in the book of the department as required under the byelaws. This, of course, is only a small number but should there in the future be again a shortage of coal then, doubtless, trade in wood fuel will increase and with the local Act and byelaws now in force, say the report, the department will have the powers to protect the consumer and to ensure that sales in quantities of 14 lb. or over are sales by weight.

We hear much about contamination through handling unwrapped foods, and Mr. Ladds has realized that inspectors, of all people, should set a good example by avoiding the use of bare hands in dealing with such articles of food. "In carrying out food inspection my inspectors are particularly careful in the observance of hygiene and take all possible steps to avoid the mis-handling of food. Clean food campaigns have aroused considerable public interest and it is most imperative that in carrying out his statutory duties an inspector insures himself against criticism."

Of 54 prosecutions undertaken during the period covered by the report, four were in respect of coal and the rest, under the Shops Act, related to unlawful Sunday trading. One prosecution which actually took place after the period of the report is mentioned. This was against a tradesman occupying a shop and living accommodation where he was registered for the keeping of mixed explosives. The occupier had been sorting out tins of fireworks which he had emptied on the floor of the living room in front of a domestic coal fire. He was about half-way through the sorting and bundling when one of the bundles became ignited by a spark thrown from the fire. Although he had two other persons helping at the time, fortunately, no one was injured. Damage was caused, and the tradesman was fined £1 but on the whole he may be considered to have been fortunate.

WARWICKSHIRE FINANCES, 1953/54

Warwickshire, the geographical heart of England, is one of the larger counties: it has an area of 559,000 acres and a population estimated in mid 1953 at 499,000. Expenditure for the year of £7,028,000 (£4,143,000 for education) was met as to 54 per cent. from government grants (including an exchequer equalization grant of £274,000), nine per cent. from miscellaneous income and 37 per cent. from rates. The total rate levied amounted to 16s. 6½d. whereas the actual rate required was slightly in excess of 16s. 8d. The resulting small withdrawal left county fund balances in hand at the end of the year amounting to £602,000, most of which was available in the liquid form of cash or investments.

Mr. S. W. Davey, F.S.A.A., Warwick county treasurer, mentions in his report that 1953/54 expenditure showed an increase of 274 per cent. over pre-war expenditure.

So far small holdings established by the county council have not been a charge on the rates. Estates held, practically all of which are owned by the county council, total 6,400 acres and there are 280 tenants. There was, however, a deficiency of £2,100 on the year's working, reducing the balance carried forward to £4,900.

Receipts attributable to the collection of motor taxation licences totalled £881,000; as against this Ministry of Transport grants for county roads were only £349,000. 1,700 miles of county roads had to be maintained, of which over 1,050 were classified.

Like many other police authorities Warwick Standing Joint Committee find the cost of police pensions continually on the increase. At March 31 last there were 232 ex-policemen and 78 widows in receipt of pensions: by comparison the authorized strength of the force at the same date was 538 men and 16 women. Pensions paid during the year cost £59,000.

There is more interest with regard to old records in Warwickshire than in some other counties and this is reflected in the net expenditure of the Records and Museum Committee of £8,300, £3,900 of which is for the maintenance of a museum—quite an unusual item in county accounts.

The county also holds a capital fund with a balance of £264,000 made up of moneys received under financial adjustments and from the sale of capital assets. Only £95,000 of this total was actually advanced to the county council and other local bodies at the year end; the remainder was invested in Government securities. Interest earned is allocated to the several rate accounts in the proportion of their respective capital amounts.

Net loan debt at March 31 amounted to £4,900,000, equivalent only to £9 16s. 0d. per head of population. The county thus has the dual satisfaction of carrying a capital debt by no means excessive and possessing a substantial revenue balance.

BEACONTREE DIVISION PROBATION REPORT

The functions of probation committees and case committees, and the relationship between those committees and the probation officers, are not very clear to the general public, and even some magistrates who have not yet gained much experience may be in need of some enlightenment on the subject. This fact has been realized by Mr. J. H. Dickinson, principal probation officer for the Beacontree division of Essex, and he has embodied some useful information about the machinery of the probation system in his annual report.

Dealing with statistical matters, Mr. Dickinson records a decrease in the number of persons on probation, which was to be expected in the light of a decrease in crime during the past two years, which Mr. Dickinson believes to be in the region of 10 per cent. There has been a decline of two-thirds in the use of approved schools and more than a half in the use of probation homes and hostels. "It does appear that crime has not presented itself as such a serious problem as in previous years, that there have not been so many gangs, and not so many persistent offenders appearing at the juvenile court, and that these factors coupled with a decline in the number of offenders has made institutional treatment less necessary. This has led to a saving of more than £1,000 on the committee's estimates last year, in addition to a saving of at least £250 a week on the Essex Children's Care Committee accounts in respect of approved school maintenance charges."

Matrimonial cases show a reduction of 70, and a high degree of success in reconciliation has been maintained—success to which Mr. C. W. Hodgson, chairman of the probation committee, testifies from his personal knowledge.

Acknowledgement is made not only to the members of the probation and case committees for their interest in the work, but also to the various departments of the county council and to outside bodies for constant help and the maintenance of cordial relations.

REPORT OF THE OVERSEA MIGRATION BOARD

The Oversea Migration Board, in its first annual report, deals generally with the principle of migration from this country, particularly to Australia, which the board supports though it is emphasized as important to the United Kingdom and to the Commonwealth as a whole that those concerned should represent a reasonable cross section of the population by age, sex and occupation. But the scheme in operation does in fact facilitate emigration of family groups and is capable of producing a well ordered system of occupational selection and recruitment, to the wide advantage, in the opinion of the board, of both countries. The board considers that it is highly important to maintain a flow of United Kingdom emigration into Australia and that the continuance of the present scheme should provide each individual migrant that assurance in practical form of the country's backing for his venture.

On child emigration it is pointed out that as the United Kingdom contribution in connexion with emigration generally has been progressively curtailed the assistance given to the voluntary societies particularly concerned with child migration has been accounting for the more important share of expenditure under the Empire Settlement Acts. Assistance to voluntary societies is covered by individual agreements for a specified period of years between the society and the Secretary of State. Agreements of this type are at present in force with eight approved societies under which the United Kingdom Government normally undertakes to provide an outfit allowance of up to £4 for each child before sailing and maintenance at the rate of ten shillings a week until the child is 16. The Commonwealth Government of Australia also grants an outfit allowance to each child on arrival and pays an additional maintenance allowance as child endowment. Further assistance is also given at various rates by the State authority.

The board is unanimous in the view that new legislative provision should be made for the continuance of these arrangements when the existing Acts expire in 1957. As is pointed out in the report, the cost of child emigrants to the economy of the United Kingdom is less than that of adults who leave in the middle of their working life and have already benefited from educational and health facilities in this country. Children, on the other hand, not only have not yet begun to contribute to the economy, but they have not completed their education and, as far as emigrant children are concerned, frequently come from broken homes and might, if they stayed in the United Kingdom eventually become or continue to be a charge upon the rates. From the Australian point of view, too, young migrants make the best migrants and the Australian authorities are particularly anxious to maintain the flow. The board considers that the advantages of the approved child migration schemes, particularly to Australia, and the responsibility accepted by the Australian authorities for the welfare and after-care of children who go out under these schemes may not be sufficiently appreciated by local authorities in this country. The board realizes that these authorities, from the most praiseworthy motives, may be reluctant to relinquish their responsibilities for the children in their care. It

would, in the opinion of the board, greatly help to maintain and increase the numbers of suitable children for migration if the facilities available overseas were made more widely known.

The board points out that it is clear from the report on "Child Migration to Australia" drawn up by Mr. John Moss, C.B.E., that the societies maintain a high standard in their homes and institutions in Australia and produce remarkably successful results. There can be no doubt in the opinion of the board that the eight societies at present in receipt of assistance have a very fine record and are in a position to use any additional help that might be granted to the best advantage in expanding their already considerable facilities. The board therefore suggests that the weekly maintenance allowance for children accepted under approved schemes should be raised to £1 a week for each child as soon as financial circumstances permit, and that a small grant should also be made to the Big Brother Movement. It is suggested, further, that there may be other similar bodies which might usefully receive grants. Finally, in this part of its report, the board recommends that the Home Office should be invited to consider how the facilities available for child migrants could best be brought to the attention of local authorities in this country.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 106

INDECENT FILMS WERE SHOWN AT THE PUB.

Two residents of Bath pleaded Not Guilty when charged at Bradford-on-Avon magistrates' court recently with two offences of showing for gain an indecent film contrary to common law.

For the prosecution, it was stated that on August 5 last watch was kept on a South Wraxall public house and at about 8.40 p.m. there were taken into the house two cases and a long wooden box. At about 9 p.m. one of the defendants came into the bar and announced "Gentlemen, the bar is now open upstairs." On going up the stairs a police officer was met by the wife of the other defendant, who had a roll of tickets. He paid 1s. and was given a ticket and then went into a room in which some 20 men were seated. In the room was a cinema screen and projector and after two innocuous films there was shown a film called "Sun Worshipper," which formed the subject of the first charge. This was a film of a naked woman dancing on the seashore.

When this film had ended another film, the subject of the second charge, called "Grinds and Bumps" was shown. This showed a female in her bedroom slowly undressing. The lady undressed with several suggestive motions and she removed all her clothing at the end of the show.

A detective constable who gave evidence supporting the opening statement mentioned that whilst the films were being shown one of the defendants said "It's all right; there aren't any policemen about."

At this stage in the hearing the magistrates retired to view the films complained of in their private room, and on their return the solicitor representing both defendants, asked permission to change his plea in regard to the second film "Grinds and Bumps," and to this the bench agreed.

The defendants gave evidence and both, in cross-examination, said that if they had adolescent children they would not object to them seeing the film "Sun Worshipper."

One defendant said he was the secretary of a film club and the other in cross-examination admitted that he had approached the film secretary and said "If you have got some saucy films the chaps would be very pleased to see them."

For the defendants, it was urged that there was no indecency of any sort whatever in the film "Sun Worshipper" and it was pointed out that nakedness was looked upon differently now to what it used to be.

The chairman announced the decision to convict upon the first charge and each defendant was fined £10 upon each charge and ordered to pay £3 3s. costs.

A summons, which had been issued against the man who was licensee of the public house at the time the films were shown, alleging that he had permitted the premises to be used for the purpose of exhibiting inflammable films without a licence, was withdrawn. The ex-licensee had written pointing out that the films in question were not inflammable and tests at the Forensic Science Laboratory had confirmed this. The bench permitted the withdrawal of the summons, but refused to grant the ex-licensee costs.

COMMENT

Little comment is needed in this case save, perhaps, on the question of punishment. The question of maximum punishment which may be

imposed upon conviction of a common law misdemeanour is an interesting subject and the whole matter was considered exhaustively by Lord Goddard, C.J., in *R. v. Morris* (1951) 115 J.P. 5. In that case Lord Goddard reviewed the great changes that had taken place in the last century in the severity of treatment meted out to prisoners and he pointed out that shot drill, crank drill and the treadmill, which used to be everyday accompaniments of imprisonment, had long since been swept away and even such comparatively minor discomforts as sleeping on a plank bed for the first fortnight of a sentence of hard labour had disappeared, with the result that imprisonment in the middle of the twentieth century was of a totally different character to that in force 100 years earlier.

Lord Goddard pointed out that in consequence of the severity of imprisonment in earlier days it had for long been thought proper that imprisonment, as opposed to penal servitude, should not be imposed for a greater term than two years, although as he pointed out, that view was set aside by Avory, J., in 1926 in the *Hayley Morris* case, where the learned Judge added a sentence of 12 months' simple imprisonment upon one charge to one of two years' imprisonment with hard labour upon another.

Lord Goddard was at pains in *R. v. Morris, supra*, to make it clear that at all times there had been preserved to the Judges the right to impose for common law misdemeanours, such sentence of imprisonment and/or fine as the court may consider appropriate, provided that it does not impose an inordinate sentence, and in *R. v. Morris, supra*, a sentence of four years' imprisonment for a common law offence imposed by Hallet, J., was upheld by the Court of Criminal Appeal, both as a lawful sentence and as an appropriate sentence, having regard to all the circumstances of the particular case.

(The writer is greatly indebted to Mr. G. H. Brown, clerk to the Bradford justices, for information in regard to this case.) R.L.H.

No. 107

THE QUASHING OF AN ENFORCEMENT NOTICE

East Ham magistrates had recently to consider the provisions of the Town and Country Planning Act, 1947. The matter was brought before them on an application by a Wanstead builder and decorator to quash an enforcement notice made by East Ham council in pursuance of their powers under s. 23 of the Act.

For the builder, it was stated that the notice dated September 3, 1954, required him, within one month, to discontinue the business use of a room at a house in East Ham, which was held by the council to be a development and to restore it to the satisfaction of the borough engineer. Counsel stated that according to the notice a development had been carried out without the grant of permission as required by part 3 of the Act. The facts were, said counsel that the builder was living in this house before the war and he then used the front room as an office. The builder was away during the war, and on returning in 1945, he set up in business again and put up a board outside the house. The room continued in use as his office, and although in 1952 he moved his residence and allowed his brother to live at the house, he still retained his office there and had his name painted on the window of the front room.

Counsel pointed out that for the enforcement notice to be valid the bench must be satisfied that the development constituted a change

in the use of the land ; that it constituted a material change ; and that the change had occurred within four years before the date of the notice, that is to say that it had not occurred before September 3, 1950.

The builder gave evidence confirming statements made by counsel and added that he had bought the freehold of the house in 1938, that there had been a sign-board outside the house since 1945 and that during the whole time he had owned the house the front room had been used only as an office. The only change, said witness, that had occurred when he let the residential part of the house to his brother was that he had removed a number of easy chairs and curtains and had his name painted on the window.

Witnesses were called to support the complainant.

For the council, it was submitted that the dominant use of the house in 1945 was residential and that the front room was ancillary to the residential accommodation. It was true that there was a board outside, but otherwise the house differed in no way from other properties in the road. In 1952, when the tenancy in favour of the complainant's brother was created, some of the furniture was taken from the front room, the curtains were taken down, and an advertisement was painted on the window. The external appearance was changed and it was made clear that a business was being carried on upon the premises. The house was in an area covered by the council's development planning, and it was contended for the council that there had been a material change of use.

The court found that there had been no material change from the time the business had started and made an order quashing the enforcement notice.

An application for costs made on behalf of the builder, was refused.

COMMENT

It will be recalled that s. 23 of the Act which empowers a local planning authority to serve an enforcement notice on the owner and

occupier of land specifying any development alleged to have been carried out without permission, and requiring the land to be restored to its former condition, also entitles a person aggrieved by the service of the notice to appeal against the notice to a court of summary jurisdiction. It will also be recalled that there is granted by subs. (5) of the section, a further appeal to quarter sessions. R.L.H.

PENALTIES

Inverness Sheriff Court—November, 1954. Assaulting a sheriff. One year's imprisonment. Defendant, a 43 year old electrician, was convicted by a sheriff of motoring offences and fined a total of £27. Defendant subsequently made inquiries as to where the sheriff lived and when he met him returning home with his wife said "Are you prepared to meet your Maker? If so, say your prayers now." He then struck the sheriff repeatedly on the face and body with his fist, knocked him to the ground twice and struck his head repeatedly on the roadway.

Bristol—November, 1954. Failing to complete territorial training. Fined £10. Defendant had completed 54 out of 60 days T.A. training after his period of National Service with the Regular Army but failed to attend when ordered training for the last six days. Defendant gave his reason that he was a railwayman who had been on strike and that he could not afford to go.

Oxford—November, 1954. Causing unnecessary suffering to a ewe by exposing it for sale when it was unfit. Fined £3, to pay £5 costs. Defendant, a farmer, sent the ewe to market: pus was seen to be coming from its nostrils and it had a number of abscesses on its face and throat.

Mark Cross—November, 1954. No wireless licence. Fined £9. Defendant had used the set without a licence since 1945.

REVIEWS

The Middle Class Vote. By John Bonham. London: Faber and Faber, Ltd. Price 21s. net.

This book is rather outside the regular interests of the *Justice of the Peace and Local Government Review* but, with a general election bound to take place within a year or two, it will doubtless be of interest to our readers. Dr. Bonham believes that much talk about the middle class vote, middle class hardships, and so forth, dates from the general election of 1945, when the success of that party which was backed by the trade unions emphasized the growing electoral cohesion of the manual wage earners. The term "middle class" is of course much older, and a "middle class union" was established in 1919, in a period of rising prices not unlike that from which England is suffering today. Dr. Bonham begins with a number of newspaper quotations of that period, among which is one suggesting that a "middle class party" could supply the need for a balancing factor between socialist and tory. Continuing the story of the period between the wars, Dr. Bonham concludes that it was difficult to find among the middle classes any belief in their political power; the emphasis was on their helplessness and hopelessness, in a political sense. With the general election of 1945, talk about a "floating vote," which had begun between the wars, began to attach itself to the other talk about the middle class as a possibly coherent power. Clearly the term means in this sense something different from what it would have meant a generation earlier. It has come to be used for professional people, whether in independent practice or employed on salary, plus a large section of salaried employees, and nearly all independent traders. Dr. Bonham produced this book first as a degree thesis; he attempts an analysis of the different sections of the middle class, and to some extent of their distribution in different parts of Great Britain. For persons who take a serious interest in the electoral processes of this country, the present study should be fascinating even though, at the end, the reviewer is left with the impression that it is no more clear than it was at the beginning who are the middle class, or what votes they give.

Executive Discretion and Judicial Control. By C. J. Hamson. London: Stevens and Sons, Ltd. Price 12s. 6d. net.

The sub-title of this book is "An Aspect of the *Conseil d'Etat*," and the book comprises lectures delivered by Professor Hamson in October, 1954, under the auspices of the Hamlyn Trust. We have noticed several earlier series of Hamlyn lectures when they were published in book form, but it may be worth while to remind readers of the manner in which those lectures came to be delivered. Miss Hamlyn of Torquay, who died in 1941, at the age of 80, bequeathed the residue of her estate in terms which, as afterwards settled by the

Chancery Division, provided for lectures which should inform "the common people of the United Kingdom of . . . the privileges which in law and custom they enjoy in comparison with other European peoples." Professor Hamson's present series of lectures might be considered to offer a left-handed compliment to English law and custom, since his theme is that (in certain matters) they do these things better in France; nevertheless, the theme is in spirit within the terms of Miss Hamlyn's will, since the lectures aim at preserving the essence of our law while, perhaps, improving our "custom" in applying it. We have also referred several times in our Notes of the Week to earlier publications by Professor Hamson on the subject of French jurisprudence, of which he has made a special study. His present purpose is to consider whether the principles of the *Conseil d'Etat*, when it adjudicates in relation to administrative acts, can be applied here by suitable modifications of our law, and can be applied particularly in those cases where a public authority has adversely affected the property or person of an individual, but has done so in accordance with the statute law. It is here that English attempts to bring administrative acts under judicial control have been least successful; where the person exercising governmental powers on whatever plane can establish that he is doing no more than the statute law provides, he is commonly not amenable to control by the judiciary, and the question whether a damaged individual has any right to compensation must be looked for *ad hoc* in the appropriate legislation. There is, as Professor Hamson says, and has said in earlier publications, the jurisdiction of the *Conseil d'Etat* in cases such as those that would be dealt with here by the prerogative writs; by injunction, or by damages, where the governmental organ has gone wrong. It is less often recognized how helpless our own High Court is, where there has been no actual default.

Like most practising lawyers and many academic lawyers, Professor Hamson is (we think) inclined to over simplify. He can see very clearly the possibility of hardship to an individual who is, for example, arrested arbitrarily and yet quite legally, or to a property owner whose property is injured or taken from him by due process of law, for some administrative or governmental purpose for which the owner would not have been willing to part with it. These are the straightforward cases which make headlines. What the journalist, and the lawyer who is not a specialist in matters of this sort, is so apt to overlook is the infinite gradation of these cases, making it extremely doubtful whether any form of judicial control as understood in England could ever be applied to English administrative processes. When it comes to a comparison between English and French systems, which is the purpose of these lectures, it is also relevant to point to the immensely greater scope of English legislation, impinging upon

the private lives and property of individuals. French lawyers, Professor Hamson tells us in his introduction, were simply unable to understand how an English enactment having statutory force could confer on the Home Secretary a power of internment of individuals, without informing those individuals of his reasons for believing that they fell within the four corners of the enactment. It is, however, equally true that the ordinary resident upon the Continent can not understand how the greater part of the modern English law imposing prohibitions and obligations on the Queen's subjects could have been

conceived in any mind, let alone could pass through the legislature and be accepted by the public. Nevertheless we are sure that these lectures, like so much that Professor Hamson has already written in the *Law Quarterly* and elsewhere, deserve to be carefully studied by every administrator and every lawyer in this country, since it is becoming increasingly clear that some sort of reform is necessary and, up to the present, the *Conseil d'Etat* has found at least one highly successful method of achieving the desired purpose, albeit in conditions very different from our own.

CORRESPONDENCE

The Editor,
*Justice of the Peace and
Local Government Review.*

DEAR SIR,

As a lay magistrate who reads your journal with great interest and profit, may I be permitted to offer a suggestion.

It can best be illustrated perhaps by reference to the note of the week "Driving Tests for Convicted Drivers" at p. 690, *ante*. I read this note with particular interest as I have recently been taking special note of powers of disqualification. In your note I read of offences "under s. 11 or under s. 12 of the 1930 Act," and there are further references below to particular sections. But to what do these sections refer? Reckless driving—careless driving—exceeding the speed limit—driving under the influence?

I could, of course, find this out from my books of reference, but I have my proper share of human indolence and when I read your journal round the fire in the evening I am sometimes perhaps a little tired.

I am sure it would be of great assistance to lay readers like myself if references to sections of statutes such as those I have mentioned could be supplied with a brief parenthetical explanation sufficient to indicate the offences to which they refer.

Yours faithfully,
MEREDITH WHITTAKER.

Aberdeen Walk,
Scarborough.

The Editor,
*Justice of the Peace and
Local Government Review.*

DEAR SIR,

With reference to your comments in the issue of November 6, I thoroughly agree that the expression "absolute discharge" is an unfortunate one. It is apt to create confusion in the mind of the average newspaper reader. In particular the presence of the word "absolute" tends to give the impression that the defendant has been proved innocent, whereas the absence of that word in reports of an acquittal tends to give the impression that the defendant has been found guilty, and has merely been discharged under something corresponding to the "Probation of Offenders Act." We would do well to copy our Scottish brethren and "admonish" our defendants instead of giving them an absolute discharge.

Yours faithfully,
A. SOLICITOR.

*The statutory authority for admonition in Scotland is to be found in ss. 46 and 77 (4) of the Summary Jurisdiction (Scotland) Act, 1908.

The Editor,
*Justice of the Peace and
Local Government Review.*

DEAR SIR,

CANDIDATES AND RELIGION

A propos your reference to the Lewes appointment in the issue of October 23, in a recently advertised police vacancy a specific question on the application form was "Religion." As an unsuccessful applicant the writer wonders what is the need for such a question, and can he be blamed if he thinks his chances were not improved, in this instance, by his stating his connexion with the Church of Rome?

Yours faithfully,
"POLICE OFFICER."

The Editor,
*Justice of the Peace and
Local Government Review.*

DEAR SIR,

DRIVING TESTS FOR CONVICTED DRIVERS

At p. 690, *ante*, you advocate a greater use of the powers conferred by s. 6 (3) of the Road Traffic Act, 1934. I suggest that these powers are of little value except in a very small number of cases.

Anybody in his right mind will obviously be on his best behaviour while taking a driving test, and the ordinary driver with a few years' experience should have little difficulty in passing. There may be a few drivers whose driving even at its best is still below the standard required to pass a test, and if such a driver is convicted, then these powers may well be invoked. In the majority of cases, however, I submit that it is as pointless to use these powers as it would be to commit a burglar to prison until he could walk along a street in company with a police constable without committing a burglary.

Yours faithfully,
R. C. HUNTRISS.

38 High Street,
Banbury.

The Editor,
*Justice of the Peace and
Local Government Review.*

DEAR SIR,

We refer to P.P. No. 7 in your issue dated November 13 at p. 720. In our experience, the situation described by your correspondent is by no means novel. The proper method to adopt is to proceed under s. 2 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, and the Indictments Procedure Rules, 1933. Application for consent to the preferment of a bill of indictment may be made either to a judge who is acting or is to act as judge at any assizes for the area in which the quarter sessions are to be held, or to the judge acting as judge in chambers in the Queen's Bench Division of the High Court.

A difficulty appears to be that, if the prisoner is on bail, he has fulfilled his obligation by surrendering to his bail at the quarter sessions to which he has been unlawfully committed, even although he may have been given notice of the new preferment. Similarly, the prosecutor and the witnesses will discharge their recognizances by appearing at that court. The difficulty can be overcome by the issue of a bench warrant for the arrest of the prisoner and the issue of subpoenae for the attendance of the witnesses. These steps cannot of course be taken until the application for consent to the preferment of the bill has been granted.

We agree with your correspondent that a possible solution to the difficulty is for the case to come before the court to which the prisoner has been unlawfully committed, and be discharged, and to proceed to re-charge the prisoner with the same offence and seek a fresh committal to the proper court of quarter sessions, but such a procedure would be unduly cumbersome and we would suggest that recourse to the provisions of the 1933 Act is the better solution.

Yours faithfully,
ERNEST H. GODSON & CO.

Solicitors,
27-31 Northgate,
Sleaford, Lincs.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, December 7

ROAD TRAFFIC BILL, read 1a

HOUSE OF COMMONS

Thursday, December 9

NATIONAL INSURANCE BILL, read 2a

Friday, December 10

WIRELESS TELEGRAPHY (VALIDATION OF CHARGES) BILL, read 2a.
NEW TOWNS BILL, read 2a.

NOTICES

The first court of quarter sessions for the city of Winchester, Hants., for 1955 will be held on Thursday, January 6, at the Guildhall, Winchester, opening at 10.45 a.m.

THE WEEK IN PARLIAMENT

By Our Lobby Correspondent

LEGAL AID IN COUNTY COURTS

The Attorney-General announced in the Commons that the Government proposed to extend legal aid to county court proceedings. He said that, as indicated in the Queen's Speech, it was the intention of the Government to introduce legislation to extend county court jurisdiction, but he was not yet in a position to say when that would be. The Government considered that if the jurisdiction of the county court was to be increased, legal aid should be made available for all types of county court proceedings which were covered by the Legal Aid and Advice Act, 1949, and in due course the Lord Chancellor would make the appropriate order under the Act for that purpose. The Government could not see their way at present to any further extension of the Act beyond that.

He would not be drawn when Mr. B. Janner (Leicester N.W.) asked what was proposed with regard to police and magistrates' courts, and Mr. Janner gave notice that he would raise the matter on the adjournment.

BILL ON COMICS SOON ?

Asked what progress had been made regarding horror comics, the Secretary of State for the Home Department, Major Lloyd George, said that while they would much prefer to see the matter dealt with by other means, the Government had come to the conclusion that they must consider the possibility of introducing legislation with a view to protecting the youth of the country.

He said that if legislation was introduced, the Government were anxious that its application should be carefully restricted to the types of pictorial publication which had, rightly, aroused so much public concern in recent weeks, and that would present considerable difficulty in drafting. A further statement would be made as soon as possible.

INFANGENTHEOF, HAMSOEN AND BLODWITE

Mr. T. Driberg (Maldon) asked the Secretary of State for the Home Department if he was aware that the Charter granted to the Borough of Maldon, Essex, in 1171, confirmed the borough's existing rights of infangenetheof, hamsoen, and blodwite, and that the exercise of

criminal jurisdiction by the borough court continued without a break from that date until the recent extinction of the quarter sessions, whereas the hundredemot of the sparsely populated Dengie Hundred lost its criminal jurisdiction before 1327; and whether those facts were among the historical considerations taken into account by the Magistrates' Courts Committee before it was decided to place the name of Dengie before that of Maldon in the title of the new petty sessional division.

Major Lloyd George replied that he was informed that the Magistrates' Courts Committee was aware of the first point but that the latter was not before them, and that there was some doubt upon it. He understood that the committee considered that the Dengie Hundred courts, which were apparently ordained by King Alfred, were the oldest local institution of which any trace had remained.

SOLICITING AND PROSTITUTION

Mr. W. W. Hamilton (Fife W.) asked the Secretary of State whether his attention had been drawn to the increased alarm concerning the high incidence of prostitution in London; and, in view of its possible adverse effects on the tourist industry, what additional measures he intended to take in the immediate future to deal with that social menace.

Major Lloyd George replied that not many complaints had been received in the Home Office about that problem during the last few months, but he was well aware that it caused a good deal of public concern. The number of arrests in London for street soliciting had considerably increased in recent years, and the Commissioner of Police of the Metropolis would continue to take such steps as he could, within the limits of his resources, to deal with that nuisance. Any question of amending the law must, however, await the report of the Departmental Committee on Homosexual Offences and Prostitution, which was at present taking evidence.

Major Lloyd George added that there had been a great deal of intensification of police patrolling in the West End, which had led to an increase in the number of prosecutions.

FARNINGHAM and SWANLEY HOMES FOR BOYS

PATRON: HER MAJESTY THE QUEEN

President :

Field-Marshal the
Viscount Montgomery
of Alamein, K.G.,
G.C.B., D.S.O.

Chairman :

David H. Lindsay, Esq.,
J.P.

Will you please send a
donation and/or make
provision for a Legacy
in your Will.



Some of the boys who need YOUR help

These Homes, founded as the first Cottage Homes in England, are NOT State-aided. They still depend on voluntary contributions for most of the funds needed to maintain and educate the hundreds of boys at Farningham and Swanley. Every boy may choose from a variety of careers and undergo a full training at the Homes in the Trade of his choice. The Homes are NATIONAL. They maintain boys from all parts of the United Kingdom.

The Secretary will be very glad to send you an illustrated booklet, printed by the boys, which tells you more about the Homes.

Chairman of London Committee :

The Rt. Hon. Lord
Ritchie of Dundee.

Hon. Treasurer :

Colonel A. E. Marnham,
M.C., T.D., D.L., J.P.

Secretary :

R. Dudley Rowe.

Head Office :

The Homes,
South Darenth,
near Dartford, Kent.
Tel. :
Farningham 2119.

STORM IN A TEACUP—II

Undismayed by the waters of discontent seething within the tea-kettle, to which we made reference last week, the staffs of our Government Departments have imperturbably clung to the time-honoured custom of the four o'clock refreshment-break. Laying down their papers and pens, they visit the local café or club where (it is to be assumed) matters of high policy are discussed while they imbibe cup after cup of the lukewarm beverage placed before them. But *tout casse, tout passe, toute lasse*, and the ancient custom has attracted the censorious attention of the Treasury, which has expressed its displeasure in an Instruction, couched in the best officialese, complaining of—

"the substantial loss of time which occurs when staffs visit refreshment-clubs (or, as sometimes happens, local tea-shops) for coffee or tea at mid-morning or mid-afternoon, and the fact that in many non-operational (*sic*) buildings it is possible to make more economic arrangements, either by the introduction of tea-trolleys or the fitting-up of fixed tea-points (!) within easy reach of working-rooms. In this connexion the Ministry of Works will, on request, provide specially-designed trolleys to enable cups of tea, cakes, etc., to be brought to the working-rooms."

In plain English, Civil Servants are no longer to waste time going out to tea, but will have it brought to their desks instead. This revolution—for it is no less—is calculated to strike at the very roots of Government administration, with results that no man can foresee.

How can any person of taste and refinement—official or layman—give proper attention to the rites of the tea-table when the ceremony is skimmed and degraded amid a welter of files, forms, telegrams, letters and minutes? *Ex oriente lux*; the pundits of the Treasury would do well to take a leaf out of the book of that ancient Celestial Empire which, for over three millenniums, prescribed the study of the native Classics for aspirants to posts of responsibility in government service.

The scrupulous care once devoted by high-minded English people to the ritual of the tea-pot is as nothing compared to the enthusiastic zeal of the Chinese. For them the preparation and drinking of tea is "a matter of loving pleasure, importance and distinction." Careful directions are prescribed for the fuelling and kindling of the stove, the preparation of the leaves, the first, second and third boilings of the water, the arrangement of the utensils and the cups:

"When the fire attacks the water, we begin to hear a sound like the singing of the wind among the pine-trees."

In China tea-drinking has always been a social institution, associated with leisure, cultured company and friendship. Ts'ai Hsiang, in the eleventh century, observing that "the essence of the enjoyment of tea lies in appreciation of its colour, fragrance and flavour," continues:

"It is important in tea-drinking that the guests be few. Many guests would make it noisy, and noise detracts from its cultured charm."

(This writer had never, apparently, visited the Tottenham Court Road Corner House.) And again:

"Drinking alone is called *secluded*; drinking between two is called *comfortable*; drinking with three or four is *charming*; drinking with five or six is *common*."

T'ien Yi-heng, author of the *Essay on Boiling Spring-Water*, writes:

"One drinks tea to forget the world's noise."

Hsu Ts'eshu went so far as to prescribe the "proper times and places for drinking tea," which include—

"When one is tired after reading poetry; when a song has been sung; during conversation with charming friends and slender concubines; in a painted boat, near a small wooden bridge; in a forest with tall bamboos; in a pavilion, overlooking lotus-flowers, on a summer's day."

On the other hand the enjoyment of tea will be spoiled by

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With such a tradition of delicacy and culture, the art of tea-making is surely one to be carefully guarded and jealously upheld. It is to be hoped that the publicity afforded to the subject may induce the Treasury Authorities to see the error of their ways, to renounce these crude and vulgar innovations, and to preserve intact one of the last remaining refinements left to this fidgety, bustling western world.

A.L.P.



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1.—Husband and Wife—Husband in Jersey—Proceedings for maintenance order.

Will you kindly inform me of the procedure to be adopted with reference to the service of a summons for maintenance—Married Women Act—on a defendant who is resident in Jersey? TELEN.

Answer.

There is no provision for the service of an English summons in Jersey. Application should be made for a provisional order under the Maintenance Orders (Facilities for Enforcement) Act, 1920, which has been extended to Jersey by Order in Council (S.I. 1953, No. 1215). The Act prescribes the procedure to be followed, see s. 3.

2.—Landlord and Tenant—Crown Lessees (Protection of Sub-Tenants) Act, 1952—Long lease—Surrender.

A is the present direct lessee of a house erected under a building lease from the Crown granted for a term of 99 years of which there are some five years to run and is paying an annual ground rent of £10 thereunder. He has been offered a new long lease at a rent of £70 per annum subject to the surrender of the remainder of the unexpired term of the existing lease.

Some 20 years ago the house was divided into three self-contained flats, two of which are let to B and C respectively on weekly tenancies, and the third is occupied by the lessee.

Upon the passing of the Crown Lessees (Protection of Sub-Tenants) Act, 1952, B and C became rent protected tenants and the rent which they were then paying to A became the controlled and standard rent.

In so far as the dwelling-house itself is concerned this is outside the Acts as not only is it held on direct lease from the Crown but it is also held on a long lease at a rent less than two-thirds of the present rateable value.

A is asking whether, in the event of his accepting the proposed new lease and paying the new rent, he will be able to increase the rent of his sub-tenants B and C proportionately.

It seems clear that no provision is made in the Rent Acts which will enable A to pass on any part of this increase to his two sub-tenants so long as they continue to enjoy the protection of the Act of 1952.

It also seems that apart from the possible effect of s. 41 of the Housing Repairs and Rents Act, 1954, or s. 15 of the Landlord and Tenant Act, 1954, the respective interests of B and C would terminate either automatically on the surrender by A of his existing lease or, in the alternative, could be terminated by express notice to quit taking effect before the new lease is granted. In this event it appears that A could grant fresh tenancies to B and C on such terms, including increases of rent, as may be appropriate.

It is not at all clear, however, how (if at all) the position is affected by the two sections mentioned above, neither of which appears to contemplate a case of this nature where the intermediate lease is surrendered and a fresh lease taken immediately in its place.

The following questions are put for your consideration:

1. Do the respective sub-tenancies of B and C automatically terminate on the surrender of A's leasehold interest?

2. If not, is it possible for A to terminate these sub-tenancies by express notice to quit before he takes the new lease?

3. What is the effect, if any, of s. 41 of the Housing Repairs and Rents Act, 1954, or s. 15 of the Landlord and Tenant Act, 1954, and in particular does either of these two sections operate to prevent B and C from losing the benefit of their existing rent protection and right to continue to pay the present standard rent?

4. Would B and C be liable to pay a proportionate part of the new rent of £70 a year without the addition of any increment due to A in respect of expenditure for which he is directly responsible to the Crown, e.g., the repairs liability under the terms of the lease?

AGRANTHA.

Answer.

1. Yes, in our opinion and their protection under the Act of 1952 will have gone.

2. This does not arise.

3. See 4 below.

4. There will be a new letting to B and C after the surrender, but the standard rent subject to the Acts of 1954 will remain the same; see s. 2 (1) (3) of the Landlord and Tenant Act, 1954.

3.—Licensing—Monopoly value of surrendered licence where no application for new on-licence in contemplation—Procedure.

Business has been discontinued at the X public house and the premises closed, but the licence has not actually been surrendered.

It is desired to have the amount of the monopoly value given up by the surrender of the licence determined under this section. There is, however, no other particular public house in respect of which an application for a new licence is immediately contemplated, although as our clients are a firm of brewers with a large number of premises, such an application would be likely to arise within the next few years, when it would be desired to have in hand the credit against monopoly value arising from the surrender of the licence at the X public house.

It is clear from the section that the two applications may be made separately, and while it does appear to contemplate that the application for the new licence shall be in view, there is no specific statement to this effect.

No particular form or period for the application appears to be laid down, and your observations would be appreciated. ORGANO.

Answer.

Section 7 (5) of the Licensing Act, 1953, enables licensing justices to determine the monopoly value of an on-licence to be surrendered at a time before any new on-licence is applied for, and nothing in the section requires that at this early stage the surrender shall be identified with any particular application for a new on-licence. Therefore, in our opinion, licensing justices may now determine the monopoly value of the licence about to be surrendered.

We answered a similar question in our vol. 117 at p. 695.

But another point arises in the situation as outlined by our correspondent. Subsection (1) of the section empowers a set-off in monopoly value only where the surrender of an on-licence is attached as a condition to the grant of a new on-licence. It seems from this that the licence to be surrendered must be "in force" at the date of application for the new on-licence. We do not read s. 7 as being wide enough to embrace a scheme in furtherance of which a licence holder may surrender his licence at will, have the monopoly value determined, and from that time have an *£ s. d.* book-entry to his credit if hereafter he sees fit to apply for a new on-licence. Section 7 (1) (a) enables the surrender of a licence in suspense under the Act, but the reference is to a licence in suspense under s. 84 or s. 92 of the Act: s. 7 does not, in our opinion, create a machinery for the suspension of a licence pending its surrender as a condition attaching to the grant of a new licence with a consequent set-off in monopoly value. If licensed business is not being carried on at the date of the next general annual licensing meeting, there will be nothing to prevent objection to renewal, and if the licence is not renewed on the ground that it has lapsed, any amount now determined as its monopoly value will, in our opinion, evaporate.

4.—Magistrates—Jurisdiction and powers—Court sitting on day other than normal weekly day—Power to continue hearing without adjournment.

The petty sessional court sits every Tuesday and occasionally a person is brought before a special court on another day charged with an indictable offence. If the special court is constituted of two justices can the offence be dealt with, or must the case be adjourned until the following Tuesday? Similarly what is the position in respect of a summary case?

Answer.

THARE.

By s. 98, Magistrates' Courts Act, 1952, it is the place where the justices sit that matters. If the two justices are sitting in the petty sessional court house (see Interpretation Act, 1889, s. 13 (13)) they can deal with the matter, whether it is indictable or summary, and they do not need to adjourn the hearing until the following Tuesday.

5.—Magistrates—Practice and procedure—Application by police for remand in custody—"Evidence of arrest"—What is required.

For some time past I have had a difference of opinion with the superintendent of police as to what evidence should be tendered when asking for a remand in custody of a defendant accused of a serious offence. It is my contention that some evidence must be tendered showing that there is evidence connecting the accused with the offence.

This matter was brought to a head recently in the case of a man charged with rape, where the police in the first instance merely gave evidence that the accused was arrested on a warrant and that, when charged, he stated that he was not guilty. I advised the justices that, although they would be justified in agreeing to a remand, they had to apply on the question of bail the tests set out on p. 73 of *Archbold*, 1933 edn. As a result of this, the police gave evidence of the fact that the accused had been picked out by the girl on an identification parade.

The police superintendent states that, in the large majority of courts, evidence of arrest is all that is required, but it is my contention that there must be evidence connecting the accused with the offence. Any help that you can give me on this point will be much appreciated.

I cannot be certain, from p. 73 of *Archbold*, whether the tests referred to there have to be applied in all cases of bail or merely in those cases where bail is applied for when a man is committed to take his trial.

Answer.

The matters referred to at p. 73 of *Archbold* are of general application, but there is no hard and fast rule covering all cases. It must often happen when a defendant is arrested that evidence to support the charge is not immediately available. If a warrant has been granted the court may have regard to the sworn information on which it was granted coupled with evidence that the defendant is the person referred to in it. If the arrest is without warrant and it is not possible at once to produce evidence implicating the accused the court may consider a remand for a very short period to enable a witness to attend.

Justices must always exercise a discretion in such matters. It cannot be right, merely because the police cannot have evidence immediately available, that a defendant whom they have long been seeking and have just arrested and who is charged with a serious offence must automatically be released on bail. On the other hand the police must not be encouraged to think, because it suits them better not to call evidence which is available, that any defendant they bring before a court will automatically be remanded in custody when they so request.

6.—Police—Conduct of case by police officer who is not informant.

I have to refer to P.P. 5 at 118 J.P.N. 191, and P.P.7 at 118 J.P.N. 460, with regard to the difficulty in which the police find themselves when the nominal informant is not available to conduct the prosecution, and to say that it is not the usual practice for an inspector to lay the information with the sole object of enabling him to conduct the case in court. The inspector laying the information is usually the inspector in charge of the sub-division within which the court lies and he has directed the work of his subordinates which has resulted in proceedings before the court, and he has vetted the reports, completed the evidence and submitted the complete files to his divisional superintendent who has authorized process, either himself or on the direction of the chief constable.

Both the inspector and the superintendent have responsibilities in the preparation of cases and institution of proceedings and it appears to me that one possible solution to the problem of unavoidable absence of the nominal police informant would be for the information to be laid in the names of both the inspector and the superintendent, so that the superintendent could conduct the case without disadvantage in the absence of the inspector.

I have asked several clerks and solicitors if it is possible to lay informations in the names of two persons and, while they agree that they have never heard of its being done, they are unable to show me any authority which precludes such a course. I should be grateful if you could state any authority which states that an information can be laid in the name of one person only, and I would welcome your views on my proposal.

STUST.

Answer.

We cannot quote any authority as having decided that it would be unlawful, but the whole scheme of the Summary Jurisdiction Acts (now the Magistrates' Courts Act and Rules) and long practice seem to us sufficient ground for rejecting our correspondent's proposal. The informant may address the court and examine and cross-examine witnesses. If there are two informants both might claim the right. Both ought presumably to be present and both might be liable for costs. That such difficulties would not be likely to arise does not really dispose of the matter, as if police officers could act thus jointly or alternatively so could other prosecutors.

7.—Private Street Works Act, 1892—Provisional apportionments.

Attention is drawn to the provisions of ss. 8 and 11 of the Private Street Works Act, 1892.

Following the service of provisional apportionments objections have been received from certain frontagers contending that the measurements of the frontage of their respective premises were incorrect. In several cases, following a further survey and examination of the deeds, it has been ascertained that there are minor discrepancies in some of the provisional apportionments, e.g., it has been ascertained that A's frontage should be six inches less than as stated and that the estimated expenses apportionable on B, his neighbour, should be increased by the cost of the extra six inches. It is clear that if the objections were taken before the justices they would have power to amend the provisional apportionments, but it has been suggested that the council may themselves amend the plans and provisional apportionments under s. 11 of the Act without the necessity of serving further notices, in which case B would not be notified of the

increase of his frontage recorded in the new provisional apportionment. If this latter course of action were taken the objectors could then be asked to withdraw their objection.

Do you agree?

P. "TUDOR."

Answer.

Yes.

8.—Town and Country Planning Act, 1947—Enforcement notice—Condition—Prosecution.

Planning permission has been granted by the local planning authority for the erection of a bungalow subject to a condition that the roof, which is of corrugated sheet asbestos, should be coloured and maintained a dark medium brown. The bungalow has been completed with the roof grey in colour, as shown in the original application. An enforcement notice under s. 23 of the Town and Country Planning Act, 1947, requiring the developer to fulfil the condition has now become effective but no steps have been taken to comply with its requirements. I had assumed in cases of this nature that the only course open was for the local planning authority to enter on the land and itself carry out the work, charging the expense of so doing to the owner or occupier of the land in accordance with the provisions of s. 24 (1) and (2). It occurs to me, however, that the case may also be within the provisions of s. 24 (3) in that the enforcement notice has required compliance with a condition in respect of the carrying out of operations on land and the developer has carried out the operations in contravention of the notice. I appreciate that it has generally been understood that subs. (3) referred only to the use of land, and the wording of the provision for a daily penalty after conviction seems to support this. On the other hand, if this is so, it is difficult to see what significance the mention in the subsection of the carrying out of operations can have. I should be grateful for your views generally and in particular whether on the facts stated a prosecution would be appropriate.

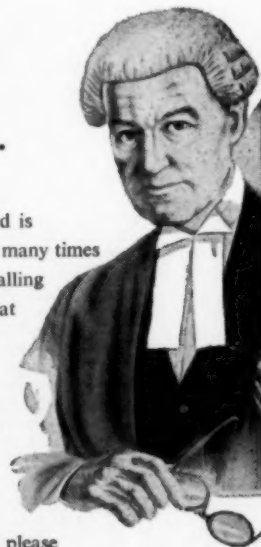
A. H.H.L.

Answer.

We consider that, for reasons given in the query, subs. (3) can be used. Whether it is wise to use the subsection rather than subs. (1) and (2) is another question; it might not be much use to secure more or less nominal fines.

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J. F. GREGG,

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